CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 468

EMMETT COCHRAN, W. M. GUICE, JR., HENRY STEINAU, ET AL., APPELLANTS,

vs.

LOUISIANA STATE BOARD OF EDUCATION ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

FILED OCTOBER 29, 1929

(34,599)

(34,599)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 468

EMMETT COCHRAN, W. M. GUICE, JR., HENRY STEINAU, ET AL., APPELLANTS,

vs.

LOUISIANA STATE BOARD OF EDUCATION ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

INDEX

	Original	Print
Record from district court of East Baton Rouge Parish....	1	1
Petition	1	1
Order to show cause.....	11	10
Exceptions and answer to rule.....	12	10
Opinion, Favrot, J.....	21	17
Proceedings in supreme court of Louisiana.....	25	20
Petition for writs of mandamus, prohibition, and certiorari, case No. 29,557.....	25	20
Opinion per curiam, case No. 29,557.....	34	30
Opinion, Overton, J., case No. 29,579.....	35	34
Opinion, Overton, J., case No. 29,569.....	36	31
Opinion, Rogers, J., concurring in part and dissenting in part, case No. 29,569.....	47	41
Petition for rehearing.....	53	46
Order denying rehearing.....	55	48

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D C., NOVEMBER 27, 1929

	Original	Print
Petition for appeal, assignments of error, and prayer for reversal	56	49
Order allowing appeal	59	51
Citation and service (omitted in printing)	60	
Bond on appeal (omitted in printing)	61	
Præcipe for transcript of record	63	52
Clerk's certificate (omitted in printing)	64	
Judge's certificate to clerk (" " ")	65	
Clerk's certificate to judge (" " ")	66	
Statement of points to be relied upon and designation to print entire record	67	54

[fols. a & 1]

IN DISTRICT COURT OF EAST BATON ROUGE PARISH

No. 3578

EMMETT COCHRAN et als.

vs.

LOUISIANA STATE BOARD OF EDUCATION et als.

PETITION—Filed August 17, 1928

To the Honorable Judges of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana:

The petition of Emmett Cochran, William M. Guice, Jr., Henry G. Steinau, and Allie H. Tarver, all residents of the Parish of Caddo, State of Louisiana, with respect represents:

I

That all of your petitioners are citizens and taxpayers of the State of Louisiana, being the owners of both real and personal properties, located within the State, upon which your petitioners pay to the State of Louisiana and the political subdivisions thereof, State, Parish, Road and Public School Taxes for the support and maintenance of the Public School system of the State of Louisiana.

2

That the Louisiana State Board of Education, one of the defendants herein, is a body politic and corporate, organized and existing under the laws of the State of Louisiana, domiciled in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana, having H. H. White, of Alexandria, Rapides Parish, Louisiana, as its President.

3

That your petitioners are patrons of the public schools system of the State of Louisiana, each having one or more

children who have been, are now and will continue for several years hereafter to be enrolled in attendance in the public schools of the Parish and community in which your petitioners live and reside.

[fol. 2] 4

That the State of Louisiana has levied and collected under the provisions of Act No. 140 of 1922, by the Legislature of Louisiana, and laws amendatory thereof, what is commonly known as the Severance Tax on natural resources within the State.

5

Your petitioners show that, unless restrained and enjoined, the defendant, Louisiana State Board of Education, will illegally expend and distribute and will continue to expend and distribute indefinitely, the Severance Tax Fund aforesaid as it accrues in order to supply school books free of cost to all the school children of the State of Louisiana, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State of Louisiana; and even now is preparing to purchase and will purchase with the public funds aforesaid, the said school books to be supplied and donated to the persona aforesaid, the said defendant giving as its authority for said acts Act No. 100 by the Legislature of Louisiana for the year 1928, and also Act No. 143 of 1928, the latter being the General Appropriation Act of the Louisiana Legislature of that year.

6

That Thomas H. Harris, State Superintendent of Public Education, whose official domicile is in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana, and who holds the position of executive officer of the Louisiana State Board of Education, is preparing to carry into effect the distribution of free text books as outlined above, and is even now instructing Parish School Boards of this State to purchase all school books, and is otherwise preparing to expend and distribute illegally public monies under the authority of said acts; and it is, therefore, necessary that he

be made a party defendant and enjoined from the illegal acts herein complained of.

[fol. 3] 7

Your petitioners further show that, unless restrained and e-joined, L. B. Baynard, Auditor of Public Accounts for the State of Louisiana, and H. B. Connor, Treasurer of the State of Louisiana, both having their official domiciles in the city of Baton Rouge, Parish of East Baton Rouge, Louisiana, will aid and assist in the wrongful use and distribution of said public monies and funds by the drawing and payment of warrants out of the same at the instance of the Louisiana State Board of Education and said Thomas H. Harris, all to the irreparable injury and damage to your petitioners, and that restraining orders and preliminary writs of injunction are necessary to protect the rights of your petitioners in the premises, directed against said officials who are also made defendants herein.

8

That Act No. 100 of the Legislature of Louisiana for the year 1928, being one of the acts under which said defendants are acting and preparing to act, provides for the distribution and expenditure of the fund realized from the collection of severance taxes in an indefinite amount, but sufficient, if available, to supply school books free of cost to all school children of the State of Louisiana, which necessarily includes books free of cost for children attending private, sectarian, religious and other schools, which constitute no part of the public educational system of the State of Louisiana, but which are especially and expressly excluded therefrom by the Statutes and by the Constitution of this State.

9

Your petitioners show that few, if any, of the school children of the State of Louisiana, are inmates of public charitable institutions conducted under State authority; that few, if any, of the parents, patrons, tutors or guardians, of the school children of the State of Louisiana are subjects of charity or benevolence; that patrons, parents,

[fol. 4] guardians and tutors of the school children of this State are amply able to provide the necessary school books for the school children for whom they are responsible; and that the parents, patrons, guardians, and tutors of the school children attending private, religious, sectarian or other schools not embraced in the educational system of the State of Louisiana are able to pay and do pay a tuition or other fees or charges to said schools.

That the courses of study and the school books prescribed by the private, religious and other schools aforesaid not embraced in the public educational system of the State of Louisiana, are different from those prescribed and used in the free public schools of this State, and the Louisiana State Board of Education has no right or authority to prescribe the course of study or the school books to be used by the children attending the schools constituting no part of the public educational system of the State of Louisiana, and petitioners show that there is a large number of such private and sectarian or denominational schools in the State of Louisiana where religious instruction is included in the course of study, and many of the school books selected, used and required in such schools, are designed and employed to aid and promote the religious beliefs, and to foster and encourage the principles of faith, and to teach the tenets of the creed, mode of worship, and ecclesiastical policy of the respective churches under whose respective control the said schools are conducted.

II

That the amount of taxes paid by your petitioners and each of them for the support of the public educational system of the State of Louisiana greatly exceeds the amount or the value of the books that would be allotted to them as patrons of the public school system and to their children who are in attendance in the free public schools of this State.

12

That Act 100 of 1928 provides that the public monies, [fol. 5] known as the Severance Tax Fund, shall first be applied to the purchase and distribution of school books free of cost to all school children of the State, which will

mean the expenditure of a large portion of said fund in aid of private persons and institutions, the balance, if any, to be devoted to the support of public education; and if the provisions of said act, as well as of the provisions of Act 143 of 1928, for the giving and donation of school books to all school children are carried out, there will be diverted for private and illegal purposes a large portion of said fund which would otherwise be devoted to the support of the free public schools of the State, of which your petitioners are patrons, and for the support of which they pay taxes; all of which will result in irreparable injury to your petitioners.

13

As will be shown by a copy of Circular No. 2467, dated July 3rd, 1928, issued by Thomas H. Harris, and addressed of the Parish Superintendents of the various parishes of the State, hereto attached and made part hereof, the local cost of administration of said Acts above referred to will have to be borne by the various parish school boards, as nothing whatever was set aside in said Acts for administration, and thus again there will be illegally diverted from said Parish School Funds a large amount of money, to which Parish School Funds your petitioners contribute as taxpayers both in State and Parish School Taxes, constituting public funds for private and sectarian and illegal purposes which would otherwise be devoted for the support of the free public schools within said parishes; all to the irreparable injury to your petitioners.

14

That said Acts Nos. 100 and 143 of 1928 provide for the purchase and distribution of school books out of the Severance Tax Fund free of cost to the school children of the State of Louisiana, but do not provide for the return of [fol. 6] said books to the State of Louisiana by the said school children to whom they are distributed after they have completed and finished the study of said books, nor do they provide for the indemnif-ation of the State in case of the loss or descruction or injury of said books by said school childern or any of them. Your petitioners show, therefore, that said Acts provide for the pure and simple

donation of said books by the State to said school children, which is wrongful and illegal and unconstitutional.

15

That said Act 100 of 1928, or so much thereof as provides for the purchase and distribution of school books, is contrary to the public policy of the State of Louisiana, and is unconstitutional, null and void, for the following reasons, to-wit:

(a) That the expenditure of said public monies as aforesaid for such illegal purposes is the taking of your petitioners' property for a private purpose without due process of law and contrary to guaranteed republican form of government, in violation of Section 2 of Article I of the Constitution of Louisiana, and in violation of Section 4 of Article IV and of the 14th Amendment of the Constitution of the United States.

(b) That said Act violates Sections 1 and 10 of Article IV of the Constitution of Louisiana in that it attempts to draw money from the public treasury without a specific appropriation therefor by law, and for a specific amount, and further violates Section 1 in that it attempts to draw money from the public treasury for a longer term than two years.

(c) That said Act violates Section 8 of Article IV of the Constitution of Louisiana in that it authorizes the taking of money from the public treasury for the purpose of teaching religion, and is in aid of churches, sects, or [fol. 7] denominations of religion, which is also in violation of Section 4 of Article I of the Constitution of Louisiana; that said Act further violates Section 8 of Article IV of the Constitution of Louisiana in that it provides for the expenditure and distribution of public funds for private, charitable or benevolent purposes to private persons and institutions.

(d) That said Act violates Section 12 of Article IV of the Constitution of Louisiana in that it loans or grants to or for private or public persons, associations, corporations and institutions funds, credit, property, or things of value of the State of Louisiana.

(e) That said Act violates Section 13 of Article XII of the Constitution of Louisiana in that it attempts to use public funds for the support of private or sectarian schools.

16

That said Act No. 143 of 1928, in so far as it attempts to make two appropriations, "Out of the severance tax fund," of $750,000.00 for the years 1928-29 and 1929-30, for the purchase and distributions of free school books for all the school children of the State, is unconstitutional, null and void, for the following reasons, to-wit:

(a) That said Act is violative of Section 16 of Article III of the Constitution of Louisiana, in that there is nothing in the title of said act indicative of the object of said Act.

(b) That said Act violates Section 8 of Article IV of the Constitution of Louisiana in that it pretends to appropriate money from the State Treasury for private, charitable, or benevolent purposes to private persons and institutions.

(c) That said Act violates Section 9 of Article IV of the Constitution of Louisiana in that such appropriations are for purposes other than those which by said Section may be embraced in the general appropriation bill.

(d) That such appropriations violate Section 10 of Ar-
[fol. 8] ticle IV of the Constitution of Louisiana in that they are not for a specific purpose or for a specific amount.

(e) That said appropriations are violative of Section 1 of Article XII of the Constitution of Louisiana in that such appropriations cover all schools, private as well as public.

(f) That such pretended appropriations are violative of Section 13 of Article XII of the Constitution of Louisiana in that they authorize the using of public funds for the support of private or sectarian schools.

(g) That said appropriations amount to the taking of petitioners' property for private purposes without due process of law and contrary to guaranteed republican form of government in violation of the aforesaid provi-

sions and of Section 2 of Article I of the Constitution of Louisiana, and in violation of Section 4 of Article IV and of the 14th Amendment to the Constitution of the United States.

17

That in the event the Court should hold that said Acts complained are not unconstitutional, null and void for the reasons hereinabove assigned, then your petitioners show that said Acts provide for the expenditure and appropriation of said funds, this to be effected and expended by the State Board of Education, and are, therefore, in violation of Section 14 of Article XII of the Constitution of Louisiana, which requires that school funds, such as realized from the Severance Tax, shall be distributed to each parish in proportion to the number of children therein between the ages of six and eighteen years, for the benefit of such children of the free public schools, their guardians and parents, including your petitioners.

18

Petitioners avers that in the ordinary course notice cannot be served, hearing had and decision rendered upon application for a preliminary writ of injunction prior to the [fol. 9] beginning of procedure on the part of the defendants and the entering into negotiations for the purchase and distribution of a portion of the Severance Tax Fund, and that immediate and irreparable injury, loss and damage will result to your petitioners from such facts and that such loss can be avoided only by the issuance by this Court of temporary restraining orders.

19

Your petitioners aver that as taxpayers and citizens of the State of Louisiana, as hereinabove alleged, they have a common interest in the prosecution of this suit to enjoin the wrongful use and distribution of public funds, including taxes paid by them, in violation of constitutional limitations and prohibitions, and that the subject matter of this suit exceeds $2,000.00, exclusive of costs and interest.

Wherefore petitioners pray that a rule nisi issue herein directed to the defendants, Louisiana State Board of Education, Thomas H. Harris, State Superintendent of Education, L. B. Baynard, Auditor of Public Accounts, and H. B. Connor, Treasurer, to show cause at a date and hour to be fixed by this Court why said defendants should not be restrained and prohibited from using, expending, or contracting to expend, any of the severance tax fund aforesaid to purchase and supply school books free of cost to the school children of the State of Louisiana, and why they and each of them should not be restrained and enjoined from purchasing and supplying school books to the school children of the State, and from taking any action whatsoever under said Acts Nos. 100 and 143 of 1928, for the purchase, supply or distribution of free school books.

Your petitioners further pray that upon hearing, said rule be made absolute, and a preliminary injunction issue.

Petitioners further pray that the said defendants and each of them be duly cited, according to law, to appear [fol. 10] and to answer hereto, and, after all legal delays and legal proceedings had, there be judgment in favor of your petitioners, and against the defendants, decreeing Acts Nos. 100 and 143 of 1928, by the Legislature of the State of Louisiana, to be unconstitutional, null and void, in so far as they provide for the purchase and distribution of free school books to the school children of the State of Louisiana, and perpetuating the said injunction enjoining the defendants from providing school books for the school children of the State of Louisiana free of cost out of the severance tax fund, and from entering into any negotiations for that purpose.

Petitioners further pray for all others and decrees necessary, for costs, and for general and equitable relief.

(Sgd.) Galloway & Johnson, Attorneys for Petitioners.

Duly sworn to by William H. Guice, Jr., and Allie H. Tarver. Jurats omitted in printing.

[fol. 11] In District Court of East Baton Rouge Parish

Order to Show Cause

It is ordered that a rule nisi issue, directed to the defendants, Louisiana State Board of Education, Thomas H. Harris, State Superintendent of Public Education, L. B. Baynard, Auditor of Public Accounts, and H. B. Connor, Treasurer of the State of Louisiana, to show cause on the 24 day of August, 1928, at 10 o'clock A. M., why a preliminary injunction should not issue restraining and prohibiting them and each of them from using, expending or contracting to spend any of the Severance Tax Funds aforesaid to purchase and supply school books free of cost to the school children of the State of Louisiana, and restraining and prohibiting them and each of them from purchasing and supplying any school books to the school children of the State of Louisiana, and from taking any actions whatsoever under Acts Nos. 100 and 143 of 1928 for the purchase or supplying of free school books.

Baton Rouge, Louisiana, August 17, 1929, 9:50 o'clock a. m.

(Sgd.) Geo. J. Favrot, Judge 19th District Court.

[fol. 12] In District Court of East Baton Rouge Parish

[Title omitted]

Exceptions and Answer to Rule—Filed August 24, 1928

In this cause now come the Louisiana State Board of Education, Thomas H. Harris, State Superintendent of Education, L. B. Baynard, Jr., Auditor of Public Accounts, and H. B. Connor, Treasurer of the State of Louisiana, made defendants in the above numbered and entitled cause, and before answering plaintiffs' petition plead the exceptions of no cause and no right of action for the reason that the plaintiffs do not show any special pecuniary interest or interest arising from any contractual relation with the State of Louisiana, other than as citizens, taxpayers and patrons of the schools; and that in such cases citizens, tax-

payers and patrons of the public schools have no right to enjoin state boards or state officers from disposing of state funds, even if the law under which the proposed distribution is to be made should be unconstitutional, which in this case is denied; and for the further reason that since the legality of the severance tax acts is not assailed, and since the Legislature has dedicated such taxes to the cause of public education in this State, the plaintiffs are without right or interest to question the manner or method specified by the Legislature for the expenditure of such funds or to seek to prevent, by injunction or otherwise, the administration of said funds by the State Board of Education to which said Board the distribution and disbursement of said fund have been specifically and particularly entrusted and in carrying out which administrative duty your respondents are about to engage; and for the further reason that this is in effect a suit against the State and not maintainable, even if plaintiffs had a pecuniary interest, which is denied.

[fol. 13] And now reserving the benefict of the foregoing pleas in case same should be overruled, defendants answer plaintiffs' petition as follows:

I

Respondents admit the allegations of Paragraph I of plaintiffs' petition.

II

Respondents admit the allegations of Paragraph 2 of plaintiffs' petition.

III.

Respondents admit the allegations of Paragraph 3 of plaintiffs' petition.

IV

Respondents admit the allegations of Paragraph 4 of plaintiffs' petition.

V

Respondents deny the allegations of Paragraph 5, except as hereinafter admitted. Respondents admit the adoption by the Legislature of Louisiana for the year 1928 of Act No. 100, being what is known as the Free School Book Act,

and of Act No. 143 of 1928, being the General Appropriation Act of the Louisiana Legislature of that year, and admit that they are preparing to expend and distribute the severance tax fund as it accrues in order to supply school books free of cost to all the school children of the State of Louisiana, and are preparing to purchase and will purchase, unless restrained, with the public funds aforesaid, the said school books for the use of all the school children of the State of Louisiana.

VI

Respondents admit the allegations of Paragraph 6 of plaintiffs' petition, except that they deny that the action of Thomas H. Harris, State Superintendent of Public Education, in preparing to carry into effect the distribution of free text books is in any sense illegal.

[fol. 14]

VII

Answering Paragraph 7 of plaintiffs' petition, respondents admit that unless restrained and enjoined, L. B. Baynard, Jr., Auditor of Public Accounts of the State of Louisiana, and H. B. Conner, Treasurer of the State of Louisiana, both having their official domiciles in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, will aid and assist in the distribution of said public monies, but deny that said aid and assistance is in any sense wrongful and illegal, deny that petitioners will suffer any injury or damages whatsoever and deny that restraining orders and preliminary writs of injunction are necessary to protect the rights of petitioners in the premises.

VIII

Answering Paragraph 8 of plaintiffs' petition, respondents admit the adoption of Act No. 100 of the Legislature of Louisiana for the year 1928 in the words and figures of the Act, otherwise deny the allegations of said Paragraph.

IX

Answering Paragraph 9 of plaintiffs' petition, respondents admit that few, if any of the said school children of

the State of Louisiana, are inmates of public charitable institutions, conducted under State authority. For lack of specific information, on the subject, respondents can neither affirm nor deny to what extent parents, patrons, tutors or guardians of the school children of the State of Louisiana are subject to charity or benevolence, or to what extent they are able to provide the necessary school books for the school children for whom they are responsible, or to what extent they are able to pay and do pay tuition or other fees or charges to church, private, religious, sectarian or other schools not embraced in the educational system of the State of Louisiana.

[fol. 15]

X

Respondents deny the allegations of Paragraph 10 of plaintiffs' petition, except that there are private and sectarian schools in the State which include in their curricula religious instruction. Further answering this paragraph, respondents aver that it is not their intention nor purpose to furnish free, or otherwise, any sectarian or denominational text books to the school children of the State of Louisiana, but that respondents propose to furnish, and will furnish, to the educable school children of the State of Louisiana only such text books as have been approved by the State Board of Education; and that respondents only propose to furnish such books to the educable school children of the State attending schools, curricula of which have been approved by the State Board of Education of Louisiana.

XI

Respondents lack sufficient information on which to base an answer to Paragraph 11 of plaintiffs' petition, and, therefore, deny the allegations of same.

XII

Respondents deny all of the allegations of Paragraph 12 of plaintiffs' petition, except that they admit the passage of Acts No. 100 and No. 143 of 1928 in the words and figures of said Acts.

XIII

Respondents admit the issuance by Thomas H. Harris of Circular No. 2467 in the words and figures of the circular, but otherwise deny the allegations of paragraph 13 of plaintiffs' petition and specifically deny that any injury will be suffered, either irreparable or otherwise, by petitioners.

XIV

Respondents admit the passage of Acts No. 100 and No. 143 of 1928 in the words and figures of the acts. They otherwise deny the allegations of Paragraph 14 of plaintiffs' petition and specifically deny that said acts are in any [fol. 16] sense illegal and unconstitutional.

XV

Respondents deny that Act 100 of the Legislature of Louisiana of 1928 is unconstitutional in any of the respects detailed in Paragraph 15 of plaintiffs' petition, or in any respect whatsoever.

XVI

Respondents deny the allegations of fact contained in paragraph 16 of plaintiffs' petition and aver that Act 100 of 1928, and Act 143 of 1928, are to be construed together; and respondents further deny that the aforesaid act 143 of 1928 is in contravention of any of the provisions of the Constitution of Louisiana of the year 1921.

XVII

Answering Paragraph 17 of plaintiffs' petition, respondents aver that both Act 100 of 1928 and Act 143 of 1928, are, in their opinion, constitutional and in furtherance of the policy and duty of the State to furnish free education to all of the educable school children of the State, and that said Acts are not in contravention of Section 14 of Article XII of the Constitution of Louisiana of 1921.

XVIII

Respondents deny the allegations of Paragraph 18 of plaintiffs' petition.

XIX

Respondents deny the allegations of Paragraph 19 of plaintiffs' petition, except that the subject matter of this suit exceeds $2,000.00, exclusive of costs and interest.

XX

Further answering, respondents aver that, believing in the constitutionality of Act 100 of 1928 and of Act 143 of 1928, respondents propose and are preparing, unless restrained by the order of this Honorable Court, to furnish free text books to the educable school children of the State, but their purpose is to only furnish such books as are approved by the State Board of Education, or which may be [fol. 17] approved by said Board, and legally acquired under the contracts made by the State Board of education and the State Superintendent of Education for the purchase of text books. Respondents particularly deny that it was or is their intention or purpose to furnish to any of the educable school children of the State of Louisiana any books or books of a religious or denominational character, or relating to any religious sect or denomination, but only such books as are or may be prescribed by the State Board of Education of Louisiana.

XXI

Further answering, respondents aver that it is a well established policy of the State of Louisiana and its bounden duty to furnish educational facilities to every child of educable age within the State, and that the State has made it mandatory upon the parents of such children to compel their attendance at a public or private school as it is set out in Act 117 of the Legislature of Louisiana of the year 1922, and which Act penalizes the parents of such children for failure to comply with its provisions; that it is notorious that the State and its subdivisions have not been able to furnish and maintain sufficient public schools to furnish

educational facilities to all of the educable children of the State and which the State by compulsory law requires to be educated; that the private schools of the State of Louisiana thus become and are, agencies of the State, aiding in the education of its children and making it possible to educate many thousands who would otherwise be deprived of educational advantages; that the children attending private schools under statutory requirements of the State are as much entitled to the use of free books as those who are being educated at greater expense to the State in the public schools thereof; that the Legislature of the State of Louisiana has as much authority and power to provide that all of the educable children of the State shall be furnished [fol. 18] with free text books regardless of whether said children are in attendance upon public or private schools as the State has to compel the free passage on ferries and toll bridges of all school children of the State whether said children are in attendance upon public or private schools. That the primary policy of the aforesaid acts of the legislature is providing free text books for the educable school children of the State, without discrimination as to race, sex, religion or creed, and respondents aver that if any children of the State are denied the privilege of obtaining free school books from the State of Louisiana because of the fact that such children are attending private or sectarian schools, such discrimination would be arbitrary, unjust and illegal, as well as unconstitutional, and incapable of legal enforcement.

Respondents further and specially answering, aver that the avails of the severance taxes of Louisiana levied under the provisions of Act 140 of 1922, and laws amendatory thereof, are, by the provisions of Act 100 of 1928, constituted a trust fund of the State, dedicated to public education and particularly to the two purposes, viz: 1st. To the purchase of text books to be supplied free to the school children of the State; and secondly, such amounts thereof as may remain after the purchase of text books to be applied and dedicated to the State Public school fund.

Your respondents aver that that the respondent State Board of Education is the designated administrative department which is charged with the duty of administering the aforesaid severance tax fund, and in the manner speci-

fied by the Legislature, and in pursuance of Article XII, Section 8, of the Constitution of Louisiana of 1921, which provides that "the Legislature shall prescribe the terms under which funds offered for educational purposes shall be received and disbursed."

Your respondents aver that since the legality of the aforesaid severance tax is not assailed, and since the Legisla- [fols. 19 & 20] ture has dedicated such taxes to the cause of public education in this State, the plaintiffs are without right or interest to question the manner or method specified by the Legislature for the expenditure of such funds or to seek to prevent, by injunction or otherwise, the administration of said funds by the State Board of Education to which said Board the distribution and disbursement of said fund has been specifically and particularly entrusted, and in the carrying out of which administrative duty your respondents are about to engage.

Wherefore respondents pray that the rule nisi issued in this case be discharged; that the prayer of plaintiffs' petition be rejected; that plaintiffs' suit be dismissed at their costs, and for all general and equitable relief in the premises.

By Their Attorneys, (Sgd.) Percy Saint, Attorney General. (Sgd.) Peyton R. Sandoz, Assistant Attorney General. (Sgd.) White, Holloman & White, (Sgd.) Burke & Smith, of Counsel. Huey P. Long, of Counsel for L. B. Baynard, Jr., Auditor, & H. B. Conner, Treasurer.

Duly sworn to by Peyton N. Sandoz. Jurat omitted in printing.

[fol. 21] IN DISTRICT COURT OF EAST BATON ROUGE PARISH

[Title omitted]

OPINION—Filed August 28, 1928

Counsel for relator cites authorities holding that a tax payer may sue to enjoin the illegal use of funds of a municipal corporation. This has been so generally held that

it may be considered as settled, because in its relation to its citizens and taxpayers a municipality may be likened to a private corporation and its citizens and taxpayers to the stockholders of the corporation. No such relation exists between the sovereign state and its citizens and taxpayers:

In Massuchusetts vs. Mellon, 262 U. S. 486, 489, 67 L. Ed. 1078-1084, Mr. Justice Sutherland, the organ of the Court, said:

"The attack upon the statute in the Frothingham Case is, generally, the same, but this plaintiff alleges, in addition that she is a taxpayer of the United States; and her contention, though not clear, seems to be that the effects of the appropriations complained of will be to increase the burden of future taxation and thereby take her property without due process of law. The right of a taxpayer to enjoin the execution of a Federal appropriation act, on the ground that it is invalid and will result in taxation for illegal purposes, has never been passed upon by this court. In cases where it was presented, the question has either been allowed to pass sub silentio, or the determination of it expressly withheld. * * * The case last cited came [fol. 22] here from the court of appeals of the District of Columbia, and that Court sustained the right of the plaintiff to sue by treating the case as one directed against the District of Columbia, and therefore subject to the rule frequently stated by this Court, that resident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. * * * The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate, and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. * * * Nevertheless, there are decisions to the contrary. The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stockholder and private corporation. * * * But the relation of a taxpayer of the United States to the Federal government is very different. His interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of

others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity.

"The administration of any statute likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public, and not of individual, concern. If one taxpayer may cham- [fol. 23] pion and litigate such a cause, then every other taxpayer may do the same, not only in respect to the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for non-Federal purposes have been enacted and carried into effect.

"The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws; to the executive the duty of executing them; and to the judiciary, the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other, and neither may control, direct, or restrain the action of the other. We are not now speaking of the merely ministerial duties of officials. * * * We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the contro- [fol. 24] versy. It amounts to little more than the negative power to disregard an unconstitutional enactment,

which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department—and authority which plainly we do not possess."

The rule held to apply in the affairs of the Federal government should apply with equal, if not greater, force in the affairs of a sovereign state.

The interest of relators as patrons of the public schools is too remote, indirect, and indeterminate to enable them to sue to enjoin a state officer from the disposition of state funds.

The rule nisi issued herein is recalled and set aside and the application for injunction denied.

(Signed) Geo. K. Favrot, Judge Nineteenth Judicial District.

Baton Rouge, La., August 28, 1928.

[fol. 25] IN SUPREME COURT OF LOUISIANA

APPLICATION OF EMMETT COCHRAN ET AL. FOR WRITS OF MANDAMUS, PROHIBITION, AND CERTIORARI IN CAUSE NO. 29,557, EMMETT COCHRAN ET AL. VS. LOUISIANA STATE BOARD OF EDUCATION ET AL.

To the Honorable the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Emmett Cochran, William M. Guice, Jr., Henry G. Steinau

and Allie H. Tarver, all residents of Caddo Parish, Louisiana, with respect represents:

1

That relators are plaintiffs in the suit entitled Emmett Cochran et als. vs. Louisiana State Board of Education et als., being No. 3578 on the Docket of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, in which relators seek to obtain a preliminary injunction and finally a permanent injunction to restrain and prohibit the defendants, Louisiana State Board of Education, Thomas H. Harris, State Superintendent of Education, L. B. Baynard, Auditor of Public Accounts, and H. B. Connor, Treasurer, of the State of Louisiana, from using, expending or contracting to expend any of the Severance Tax Fund of the State of Louisiana to purchase and supply school books free of cost to the school children of the State of Louisiana, and to restrain and prohibit said defendants from taking any action whatever under Acts 100 and 143 of the Legislature of Louisiana for the year 1928.

2

That the aforesaid suit was submitted to the Honorable George K. Favrot, Judge of the Nineteenth Judicial District Court, on Friday, August 24, 1928, on application for a writ of preliminary injunction. The case was submitted on plaintiffs' petition, a certified copy of which is hereto attached and made part hereof, the answer or return thereto by the defendants, a certified copy of which is hereto attached and made part hereof, and on certain affidavits and exhibits filed by both plaintiffs and defendants in pursuance to the provisions of Act 29 of 1924, of the Louisiana Legislature, under which the case was tried.

3

That the respondent Judge, the Honorable George K. Favrot, on the 28 day of August, 1928, rendered judgment in favor of defendants and against plaintiffs, your rela- [fol. 26] tors, dismissing the suit, recalling the Rule Nisi

theretofore issued, and denying the preliminary injunction prayed for.

4

That your relators have taken a devolutive appeal from said judgment, according to the provisions of Act No. 29 of 1924, but this remedy affords no adequate relief to your relators, because before a hearing can be had on said appeal, the defendants and respondents will proceed to the purchase and distribution of school books free of cost to the school children of the State of Louisiana, illegally expending therefor monies out of the Severance Tax Fund of the State of Louisiana, as provided by Acts 100 and 143 of 1928, there being no order from any court of competent jurisdiction restraining them from so doing, all of which will result in irreparable injury to your relators.

5

That, therefore, the only effective remedy left to your relators is to invoke the supervisory jurisdiction of this Honorable Court, under a writ of certiorari, and to obtain from this Honorable Court an order of preliminary injunction, which remedy has been approved and pointed out by this Honorable Court in the cases of Hofman-Olsen Inc. vs. Northern Lumber Manf. Co., 160 La. 849, and Wachsen vs. Commission Council of Lake Charles, 162 La. 823.

6

That relators are citizens and taxpayers of the State of Louisiana, being the owners of both real and personal properties, located within the State, upon which they pay the State of Louisiana and political subdivisions thereof State, Parish, Road and Public School Taxes for the support and maintenance of the public school system of the State of Louisiana; that relators are patrons of the public school system of the State of Louisiana, each having one or more children who have been, are now, and will continue for several years hereafter to be enrolled in attendance in the public schools of the parish and community in which your relators live and reside.

7

That Act 100 of the Legislature of Louisiana for the year 1928, being one of the Acts under which said defendants are [fol. 27] acting and preparing to act, provides for the distribution and expenditure of the funds realized from the collection of severance taxes, (provided by Act 140 of 1922 of the Legislature of Louisiana) in an indefinite amount, but sufficient, if available, to supply school books free of cost to all school children of the State of Louisiana, which necesarily includes books free of cost for children attending private, sectarian, religious and other schools which constitute no part of the public educational system of the State of Louisiana, but which are especially and expressly excluded therefrom by the Statutes and by the Constitution of this State.

8

Your petitioners show that few, if any, of the school children of the State of Louisiana are inmates of public charitable institutions conducted under State Authority; that few, if any, of the parents, patrons, tutors or guardians of the school children of the State of Louisiana are subjects of charity or benevolence; that patrons, parents, guardians and tutors of the school children of this State are amply able to provide the necessary school books for the school children for whom they are responsible; and that the parents, patrons, guardians and tutors of the school children attending private, religious, sectarian or other schools not embraced in the educational system of the State of Louisiana are able to pay and do pay a tuition or other fees or charges to said schools.

9

That the courses of study and the school books prescribed by the private, religious and other schools aforesaid not embraced in the public educational system of the State of Louisiana, are different from those prescribed and used in the free public schools of this State, and the Louisiana State Board of Education has no right or authority to prescribe the courses of study or the school books to be used

by the children attending the schools constituting no part of the public educational system of the State, and petitioners show that there is a large number of such private and sectarian or denominational schools in the State of Louisiana where religious instruction is included in the course of study, and many of the school books selected, used and required in such schools are designed and employed to aid and promote the religious beliefs, and to [fol. 28] foster and encourage the principles of faith, and to teach the tenets of the creed, mode of worship, and ecclesiastical polity of the respective churches under whose respective control the said schools are conducted.

10

That the amount of taxes paid by your petitioners and each of them for the support of the public educational system of the State of Louisiana greatly exceeds the amount or the value of the books that would be allotted to them as patrons of the public school system and to their children who are in attendance in the free public schools of this State.

11

That Act 100 of 1928 provides that the public monies, known as the Severance Tax Fund, shall first be applied to the purchase and distribution of school books free of cost to all school children of the State, which will mean the expenditure of a large portion of said fund in aid of private persons and institutions, the balance, if any, to be devoted to the support of public education; and if the provisions of said Act, as well as of the provisions of Act 143 of 1928, for the giving and donation of school books to all school children are carried out, there will be diverted for private and illegal purposes a large portion of said fund which would otherwise be devoted to the support of the free public schools of the State, of which your petitioners are patrons, and for the support of which they pay taxes; all of which will result in irreparable injury to your petitioners.

12

That the local cost of administration of said Acts above referred to will have to — borne by the various parish

school boards, as nothing whatever was set aside in said Acts for administration, and thus again there will be illegally diverted from said Parish School Funds a large amount of money, to which Parish School Funds your petitioners contribute as taxpayers both in State and Parish School Taxes, constituting public funds for private and sectarian and illegal purposes which would otherwise be devoted for the support of the free public schools within said parishes; all to the irreparable injury to your petitioners.

[fol. 29] 13

That said Acts Nos. 100 and 143 of 1928 provide for the purchase and distribution of school books out of the Severance Tax Fund free of cost to the school children of the State of Louisiana but do not provide for the return of said books to the State of Louisiana by the said school children to whom they are distributed after they have completed and finished the study of said books, nor do they provide for the indemnification of the State in case of the loss or destruction or injury of said books by said school children or any of them. Your, petitioners, show, therefore, that said Acts provide for the pure and simple donation of said books by the State to said school children, which is wrongful and illegal and unconstitutional.

14

The basis of plaintiffs' suit is as follows:

That said Act 100 of 1928, or so much thereof as provides for the purchase and distribution of school books, is contrary to the public policy of the State of Louisiana, and is unconstitutional, null and void, for the following reasons, to-wit:

(a) That the expenditure of said public monies as aforesaid for such illegal purposes is the taking of your petitioners' property for a private purpose without due process of law and contrary to guaranteed republican form of government, in violation of Section 2 of Article I of the Constitution of Louisiana, and in violation of Section 4 of Article

IV and of the 14th Amendment of the Constitution of the United States.

(b) That said Act violates Section- 1 and 10 of Article IV of the Constitution of Louisiana in that it attempts to draw money from the public treasury without a specific appropriation therefor by law, and for a specific amount, and further violates Section 1 in that it attempts to draw money from the public treasury for a longer term than two years.

(c) That said Act violates Section 8 of Article IV of the Constitution of Louisiana in that it authorizes the taking of money from the public treasury for the purpose of teaching religion, and is in aid of churches, sects, or denominations of religion, which is also in violation of Section 4 of Article I of the Constitution of Louisiana; that said act further violates Section 8 of Article IV of the Constitution of Louisiana in that it provides for the expenditure and distribution of public funds for private, charitable, or benevolent purposes to private persons and institutions.

(d) That said Act violates Section 12 of Article IV of the Constitution of Louisiana in that it loans or grants to private persons, associations, corporations and institutions funds, credit, property, or things of value of the State of Louisiana.

(e) That said Act violates Section 13 of Article XII of the Constitution of Louisiana in that it attempts to use public funds for the support of private or sectarian schools.

[fol. 30] Second. That the Act No. 143 of 1928, in so far as it attempts to make two appropriations "Out of the Severance Tax Fund," of $750,000.00 for the years 1928-29 and 1929-30, for the purchase and distribution of free school books for all the school children of the State, is unconstitutional, null and void, for the following reasons, to-wit:

(a) That said act is violative of Section 16 of Article III of the Constitution of Louisiana, in that there is nothing in the title of said Act indicative of the object of said Act.

(b) That said Act violates Section 8 of Article IV of the Constitution of Louisiana in that it pretends to appropriate

money from the State Treasury for private, charitable, or benevolent purposes to private persons and institutions.

(c) That said Act violates Section 9 of Article IV of the Constitution of Louisiana in that such appropriations are for purposes other than those which by said Section may be embraced in the general appropriation bill.

(d) That such appropriations violate Section 10 of Article IV of the Constitution of Louisiana in that they are not for a specific purpose or for a specific amount.

(e) That said appropriations are violative of Section 1 of Article XII of the Constitution of Louisiana in that such appropriations cover all schools, private as well as public.

(f) That such pretended appropriations are violative of Section 13 of Article XII of the Constitution of Louisiana in that they authorize the using of public funds for the support of private or sectarian schools.

(g) That said appropriations amount to the taking of petitioners' property for private purposes without due process of law and contrary to guaranteed republican form of government in violation of the aforesaid provisions of Section 2 of Article I of the Constitution of Louisiana, and in violation of Section 4 of Article IV and the 14th Amendment to the Constitution of the United States.

Third. That both of said acts are unconstitutional, null and void in that they provide for the expenditure and appropriation of said funds, this to be effected and expended by the State Board of Education, and are therefore, in violation of Section 14 of Article XII of the Constitution of Louisiana, which requires that school funds, such as realized from the Severance Tax, shall be distributed to each parish in proportion to the number of children therein between the ages of six and eighteen years, for the benefit of such children of the free public, their guardians and parents, including your petitioners.

15

Relators aver that as taxpayers and citizens of the State of Louisiana and as patrons of the free public school system of the State of Louisiana, as hereinabove alleged, they

have a common interest in the prosecution of this suit to enjoin the wrongful use and distribution of *of* public funds, [fol. 31] including taxes paid by them, in violation of constitutional limitations and prohibitions, and that the subject matter of this suit exceeds $2,000.00, exclusive of costs and interest.

16

That relators are entitled to a preliminary writ of mandamus on the Honorable George K. Favrot, Judge of the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, ordering him to issue the preliminary injunction prayed for in the petition of relators in the trial court or alternative writs of certiorari and mandamus and such other relief as, in the opinion of this Honorable Court, relators are entitled.

17

Relators have given notice to the Honorable George K. Favrot, Judge of the 19th Judicial District Court, to Louisiana State Board of Education, Thomas H. Harris, State Superintendent of Education, L. B. Baynard, Auditor of Public Accounts, and H. B. Conner, Treasurer, respondents herein, of their intention to apply to the Honorable Supreme Court of the State of Louisiana for the issuance of said writs.

18

There is attached hereto and made part of this petition certified copies of petition, answer and return, opinion and judgment of the trial Judge in said suit No. 3578, entitled Emmett Cochran et als. vs. Louisiana State Board of Education et als., on the Docket of the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana, and copy of brief of authorities filed by relators in trial court.

Wherefore relators pray that, this petition and the affidavits hereto and the annexed documents considered, a peremptory writ of mandamus issue herein, directed to the Honorable George K. Favrot, Judge of the 19th Judicial District Court in and for the Parish of East Baton Rouge,

State of Louisiana, ordering him to forthwith issue a preliminary injunction as prayed for by relators in their petition in the Suit No. 3578, on the Docket of said Court, styled Emmett Cochran et als. vs. Louisiana State Board of Education et als., upon relators furnishing bond in such amount as said judge shall fix, conditioned as the law requires, and to proceed to a trial of said case on its merits.

Relators further pray, in the alternative, that alternative writs of certiorari and mandamus issue herein to the said [fol. 32] respondent Judge in the manner provided by law, directing that a preliminary injunction issue as prayed for by the relators in the said suit of Emmett Cochran et als. vs. Louisiana State Board of Education, et als., according to law, and, in the alternative, requiring said respondent judge to send up the record in this case and to show cause to the contrary on a day and hour to be fixed by this Honorable Court, and that in the meantime this Honorable Court issue an order restraining and prohibiting the other respondents, above named, namely, Louisiana State Board of Education, L. B. Baynard, Auditor of Public Accounts, and H. B. Conner, Treasurer, from performing or carrying out any of the acts sought to be restrained by said preliminary injunction and from purchasing and supplying or contracting or negotiating for the purchasing and supplying of school books free of cost to the school children of the State of Louisiana and from taking any action whatever under Acts 100 and 143 of the Legislature of Louisiana for the year 1928.

Relators further pray for all orders and decrees necessary for costs and general and equitable relief.

Galloway & Johnson, Attorneys for Relators.

[fol. 33] *Duly sworn to by William M. Guice, Jr., and Henry G. Steinan. Jurat omitted in printing.*

[fol. 34] IN SUPREME COURT OF LOUISIANA

No. 29557

EMMETT COCHRAN et al.

vs.

LOUISIANA STATE BOARD OF EDUCATION et al.

In re Emmett Cochran et al. Applying for Writs of Mandamus, Prohibition and Certiorari

OPINION—Oct. 2, 1928

Write refused, as relators are without interest in the controversy. Sutton vs. Buie, 136 La. 234; Massachusetts vs. Mellon, 262 U. S. 486, 489, 67 L. Ed. 1078, 1084, 1085; Borden et al. vs. Louisiana State Board of Education, No. 29,540.

(Signed) J. R. L., H. F. B., St. Paul, W. O.

O'Niell, C. J., and Rogers and Thompson, J. J., dissent from the refusal to grant the writ.

[fol. 35] IN SUPREME COURT OF LOUISIANA

29579

EMMET COCHRAN et al.

vs.

LOUISIANA STATE BOARD OF EDUCATION et al.

Appeal from the Nineteenth District Court, Parish of East Baton Rouge, George K. Favrot, Judge

OPINION—June 17, 1929

OVERTON, J.:

The issues presented in this case are the same, in all essential respects, as those this day decided in the case of Silas P. Borden et al., No. 29,569 of the docket of this court, the only difference between the two cases being that plain-

tiffs besides suing as citizens and taxpayers, are also suing as patrons of the public schools.

For the reason given in the case of Silas P. Borden et al. v. Louisiana State Board of Education, the judgment of the trial court refusing to issue the injunction, is affirmed.

O'Niell, C. J. Dissents.

Rogers, J., concurs in the opinion overruling exception of no right of action; otherwise dissents.

Thompson, J., concurs in opinion overruling exception of no right of action and otherwise dissents and concurs in dissenting opinion of Mr. Justice Rogers.

[fol. 36] IN SUPREME COURT OF LOUISIANA

No. 29569

SILAS P. BORDEN et al.

v.

LOUISIANA STATE BOARD OF EDUCATION et al.

Appeal from the Nineteenth District Court, Parish of East Baton Rouge, George K. Favrot, Judge

OPINION—June 17, 1929

OVERTON, J.:

This suit is an attack upon the constitutionality of Acts 100 and 143 of 1928, in so far as those acts relate to, or appropriate money for, the purchase of school books for the use of the school children of this state. The relief asked for is that these acts be declared unconstitutional and that the Louisiana State Board of Education, the Auditor of Public Accounts, the State Treasurer, and the State Superintendent of Public Education be enjoined from using the money appropriated by the acts for the purchase of school books.

The plaintiffs are citizens and taxpayers of this state, and prosecute this suit as such. Act 100 of 1928, which is one of the acts attacked by them, omitting its title, reads as follows:

"Section 1. Be it enacted by the Legislature of Louisiana, That the Severance Tax Fund of the State, as levied by Act 140 of 1922, as amended, shall be devotel after allowing funds and appropriations as provided by the Constitution of the State, first, to supplying school books to the school children of the State of Louisiana, and that thereafter such further sums as remain in the said Severance Tax Fund shall be transferred to the State public school funds.

"Sec. 2. That the State Board of Education of Louisiana shall provide the said school books for school children free of cost to such children out of said tax fund, and thereafter apply the remaining sums out of the said Severance Tax Fund to the State public school funds.

"Sec. 3. That this act shall not apply to persons attending colleges and universities."

Act 143 of 1928, the last of the two acts attacked, is the General Appropriation Act. After making various appropriations for the fiscal years 1928-29 and 1929-30, out of the [fol. 37] general revenues of the State, and after making certain appropriations out of the Severance Tax Fund, the act, (See page 188 of the Acts of 1928), appropriates out of that fund $750,000 for each of those years, the appropriations to be used for the following purpose, to wit:

"For purchase of free school books for the use of school children of this State, to be expended by the State Board of Education of Louisiana as provided by House Bill No. 90 of 1928 [Act 100 of 1928], or so much thereof as may be necessary."

After making the appropriations for school books, the act then provides that the balance of the Severance Tax Fund shall be transferred to the Current School Fund as provided by House Bill No. 90 of 1928, which is Act 100 of 1928, quoted above.

The title of the act making the foregoing appropriations is: "An act making an appropriation to defray the ordinary expenses of the Government; to pay the interest on the public debt; and to support public schools and public charities in the State of Louisiana; to build and repair

public levees; to maintain the State Penitentiary and other State departments for the year commencing July 1st, 1928, and ending June 30th 1929, and for the year commencing July 1st, 1929, and ending June 30th 1930."

The constitutionality of the two acts under consideration is attacked on various grounds, so far as the acts relate to, or provide for, the purchase and distribution of school books. The pleas of unconstitutionality are leveled in the pleadings against each act separately, with the result that some grounds of attack that might have been leveled specifically against both acts are leveled only against Act 100. Plaintiffs, in their brief, however, have considered that, where the pleas are applicable to both acts, they were intended to apply to both, and have so treated them. Defendants have apparently acquiesced in this. In view of this acquiescence, and in view of the fact that the two acts are very closely related, we shall consider that, where a plea is applicable to both acts, and is so discussed in the briefs, it was so intended to apply, and shall state the case accordingly.

Plaintiffs urge that Act 100, in so far as it relates to the purchase of school books, contravenes Sections 1 and 10 [fol. 38] of Article 4 of the Constitution of 1921, in that it attempts to draw money from the public treasury without a specific appropriation therefor, and also contravenes Section 1 of that article, in that it attempts to draw money from the public treasury for a longer term than two years.

Plaintiffs also urge that Act 143 of 1928, so far as relates to the appropriation of money for school books, contravenes Section 16 of Article 3 of the Constitution, in that the title of the act has nothing in it indicating the intention to make appropriations for the purchase of such books, and that the act also contravenes Section 9 of Article 4 of the Constitution, in that the appropriations for the purchase of school books are for a purpose other than any of those which by said section may be embraced in the General Appropriation Bill.

Plaintiffs also urge that both of the foregoing acts, so far as they relate to the purchase and distribution of school books, contravenes Section 8 of Article 4 and Section 4 of Article 1 of the Constitution, in that they autho-

rize and provide for the expenditure and distribution of public funds for private, charitable or benevolent purposes to private persons and institutions, and in that they authorize the taking of money from the public treasury for the purpose of teaching religion and are in aid of churches, sects or denominations of religion; that they violate Section 12 of Article 4 of the Constitution, in that they lend or grant to private persons, associations, corporations, and institutions funds, credit, property, or things of value, belonging to the state; that they violate Section 13 of Article 12 of the Constitution, in that they attempt to use public funds for the support of private and sectarian schools; and that they violate Section 14 of Article 12 of the Constitution, relating to the distribution of public school funds.

Based upon the foregoing allegations of unconstitutionality, plaintiffs close their attack upon the acts by alleging that the expenditure of the severance tax for such illegal purposes is the taking of their property for private purposes, without due process of law, in contravention of Section 2 of Article 1 of the Constitution of this state, and [fol. 39] of the 14th Amendment of the Constitution of the United States, and is an act contrary to the republican form of government, guaranteed to each state by Section 4 of Article 4 of the Constitution of the United States.

Defendants urge that plaintiffs fail to disclose a right of action. This contention rests upon the ground that a citizen and taxpayer has no standing as such to contest the expenditure of the funds of the state under an alleged unconstitutional statute, and that, even if it were otherwise, plaintiffs do not disclose wherein they would suffer irreparable injury by the expenditure of the money appropriated for the purpose of school books. The members of the court are divided on this question. Four members thereof, namely, the Chief Justice, and Justices Land, Rogers and Thompson are of the opinion that plaintiffs, as tax payers, have a right of action to contest the expenditure of public funds, belonging to the state, under an alleged unconstitutional statute. The members of the court, so thinking, are of the opinion that the case of Donalson v. Police Jury, on rehearing, 161 La. 480, 109 So. 38, and the decisions there cited, are controlling in this case. On the other hand, Justices St. Paul and Brunot, and the writer of this opinion think that plaintiffs, as taxpayers,

have no right to prosecute this suit, or in other words, that they have no right of action. In their view Donalson v. Police Jury is not pertinent here, since it did not involve the funds of the state. In their opinion the question should be decided according to the principles laid down in the case of Sutton v. Buie, 136 La. 234, 66 So. 956, and Massachusetts v. Mellon, 262 U. S. 447, 43 Sup. Ct. 597, 67 L. Ed. 1078. However, the four members of the court, who think that a right of action is disclosed, are of the opinion that Massachusetts v. Mellon is not appropriate here, as it has reference to a taxpayer of the United States, and that the case of Sutton v. Buie, so far as it maintains that a taxpayer has no right of action in a case like this, is contrary to the great weight of authority and should not be followed. Many of the cases relied on by these members of the court, as showing the weight of authority, may be found in the annotations to Sutton v. Buie, L. R. A., 1915 D. 178. From [fol. 40] the foregoing, it is obvious that a majority of the court are of the opinion that plaintiffs disclose a right of action. Therefore, the plea that plaintiffs disclose no right of action is overruled.

The overruling of this plea makes it necessary to consider the pleas of unconstitutionality directed against the two statutes by plaintiffs. The contention that Act 100 of 1928 violates Sections 1 and 10 of Article 4 of the Constitution, relative to the manner of making appropriations and fixing a limit upon the time for which appropriations may be made, is not well founded, for the simple reason that Act 100 is not, and does not purport to be, an appropriation act. It does not authorize the drawing of anything from the treasury. It merely dedicates a part of the Severance Tax Fund, without even specifying the amount, to the purchase of school books. Standing alone the act could have no practical effect, save as a basis for specific appropriations. That such an act is not an appropriation act, but merely an act of dedication, see Fisher v. Steele, Auditor, 39 La. Ann. 447; Board of Adminstrators v. Richhardt, 139 La. 446, 71 So. 735; Lionel's Cigar Store v. McFarland, Supervisor, 162 La. 956, 111 So. 341. Since the act is not an appropriation act, it was unnecessary that the Legislature, in passing it, comply with the constitutional provisions relative to the making of appropriations, by

making them for specific purposes and specific amounts and for a period not exceeding two years.

The contention that Act 143 of 1928 contravenes Section 16 of Article 3 of the Constitution, because the title of the act fails to indicate the intention of making the appropriations for the purchase of school books, presents the next question for consideration. We have quoted the title of the act in stating the case. In considering the question presented, it should be borne in mind that we are passing upon the sufficiency of the title of the General Appropriation Act, and that every reasonable presumption, supporting the sufficiency of the title is peculiarly entitled to application, and this, though the sustaining of the plea, in the present instance, would result in declaring null only [fol. 41] the appropriations for the purchase of school books. The title of the act is similar to the titles usually used in General Appropriation Acts in this State, and in fact, follows the Constitutional requirements as to what may be contained in such acts. We think that the title, suffices to cause one to anticipate that, upon investigation, some such appropriations may be found in the body of the act. We, therefore, conclude that the title is sufficient.

The next question to be considered is whether the appropriations for the purchase of school books are such appropriations as may be included in the General Appropriation Act. Section 9 of Article 4 of the Constitution reads that "the General Appropriation Bill shall embrace nothing but appropriations for the ordinary expenses of the government, pensions, the public debt and interest thereon, public schools, public roads, public charities and all state institutions; and such bill shall be so itemized as to show for what account each and every appropriation shall be made. All other appropriations shall be made by separate bills, each embracing but one object." The purpose of this provision is to prevent the encumbering of the General Appropriation Bill with all kinds of appropriations, thus simplifying it, and thereby reducing the chances of making ill-considered appropriations in the confusion that might otherwise arise, and preventing the retarding of the bill by protracted discussions over matters that more properly should be separately considered. While the provision possesses substantial reasons for its existence, yet consideration should be given the judgment of

the Legislature as to what may properly come within it. The Legislature evidently considered that the appropriations for the purchase of school books were sufficiently connected with the ordinary expenses of government to justify their inclusion in the General Appropriation Act. The purpose had in view, in making the appropriations—that of reducing and, if possible, of obliterating illiteracy in this state—was a purpose in which the state was vitally interested, and the necessity for the continuance of the appropriations to accomplish that end was such as to give reasonable grounds to consider the matter an ordinary obligation and expense of government. We are not prepared [fol. 42] to say that the Legislature erred in so treating the matter.

We may consider together the objections urged against both acts to the effect that they violate Section 8 of Article 4, Section 4 of Article 1, Section 13 of Article 12, and Section 12 of Article 4 of the Constitution.

Section 8 of Article 4 prohibits, among other things, the taking of money from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher of religion as such, or for private, charitable, or benevolent purposes to any person or community, excepting certain institutions conducted under state authority. Section 4 of Article 1 relates to the right to worship God according to the dictates of one's own conscience, and prohibits the passage of laws establishing religion, or the free exercise thereof, or the granting of preferences to, or making discriminations against, any church, sect, or religious creed. Section 13 of Article 12 prohibits the using of public funds for the support of any private or sectarian school. Section 12 of Article 4 prohibits, among other things, the lending, pledging or granting the funds, credit, property or things of value of the state or of any political corporation thereof to or for any person or persons, association or corporation, public or private.

In our opinion, which is the view of the majority of the court, these acts violate none of the foregoing constitutional provisions. One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian, or even public school. The appropriations were made for

the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or nonsectarian, and that the books are to be furnished them for their use, free of cost, whichever they attend. The schools, however, are not the beneficiaries of these ap- [fol. 43] propriations. They obtain nothing from them, nor are they relieved of a single obligation, because of them. The school children and the state alone are the beneficiaries. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, though without success, in vain in an effort to find anything to the effect that it is the purpose of the state to furnish religious books for the use of such children. In fact, in view of the prohibitions in the Constitution against the state's doing anything of that description, it would be legally impossible to interpret the statute as calling for any such action on the part of the state, for where a statute is susceptible of two constructions, one of which makes it unconstitutional and the other constitutional, the interpretation making it constitutional must be adopted. What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the State Board of Education is doing. Among these books, naturally, none is to be expected, adapted to religious instruction.

As relates to the contention that the statutes violate Section 12 of Article 4 of the Constitution, we do not find this contention well founded. The school books are not granted or donated to the children. The donating of them would have been unnecessary to the accomplishing of the purpose of the statutes. It is only the use of the books that is granted to the children, or, in other words, the books are lent to them, which implies that they are to be returned. While it is true that there is a lending here of things of value, belonging to the state, still this lending is not the lending prohibited by the Constitution. The lending there

contemplated is a lending, not connected with the reasonable exercise of the police power. Where the granting or lending of anything of value, belonging to the state, or any political corporation thereof, is necessary in the reasonable exercise of the police power, Section 12 of Article 4 of the Constitution was not intended to prevent the granting or [fol. 44] lending. Were it otherwise, the state, or a municipal corporation, could not furnish, for instance, vaccine for the prevention of an epidemic. In fact, the Constitution presupposes the existence of the police power and is to be construed with reference to that fact. 12 C. J., Sec. 415, p. 907; 6 R. C. L., Sec. 193, p. 195. The furnishing of school books to the children of the state, for their use, in attending school, tends directly to promote the education of the children of the state and to obliterate illiteracy, thereby improving the morals of the children and promoting the general welfare and safety of the people, and hence comes within the police power. Cf. Barbier v. Connerly, 113 U. S. 27, 28 L. Ed. 923. Our conclusion is that the foregoing pleas, directed against both acts, should be overruled.

The next plea to be considered is that both acts contravene Section 14 of Article 12 of the Constitution. This section defines what the public school funds of the state shall consist of, and provides that such funds, with the exception of poll taxes and the interest on proceeds of lands granted by the United States for the support of public schools, shall be distributed to each parish in proportion to the number of children therein between the ages of six and eighteen years. The contention is that the parish school boards are, by this section of the Constitution, the proper distributing agencies of all school funds, excepting poll taxes and the interest on the proceeds of land, and not the State Board of Education. From this, plaintiffs draw the conclusion that the State Board of Education is not the proper agency under the Constitution to expend public school funds for school books. The answer to this is that the severance taxes, from which the appropriations were made, were not a part of the public school fund. They might have been made a part of it by the Legislature, but they were not. This plea should be overruled.

The last question to be considered is that the act violates the due process clauses of the Constitutions of this

state and of the United States, and also Section 4 of Article 4 of the Constitution of the United States. The contention, as to the violation of the due process clauses, is based on the ground that taxes may neither be levied nor expended [fol. 45] for any but a public purpose, and that to do either for any but such a purpose amounts to a taking of property without due process of law. It suffices to say that we do not understand that plaintiffs question the legality of the levy, but they do question the legality of the proposed expenditure. We have found, however, that the taxes, here appropriated, are to be spent legally for a public purpose, and this, we think, disposes of the question here presented. As to the violation of Section 4 of Article 4 of the Constitution of the United States, it is certainly difficult, and we think impossible, to see how the expenditure of public funds for text books for the use of the children of the state has any tendency to destroy the republican form of government, enjoyed by this state. However, the question here presented is a political one, which does not fall within the jurisdiction of the courts. Pacific States Telph. & Teleg. Co. v. Oregon, 223 U. S. 118, 56 L. Ed. 377, 32 Sup. Ct. 224; South Dakota ex rel. Wagner v. Summers, 144 N. W. 730, 50 L. R. A. (N. S.) 206.

The trial judge refused to issue the injunction herein, and rendered judgment accordingly. His decree should be affirmed.

For the reasons assigned the judgment appealed from is affirmed.

[fol. 46] O'Niell, C. J., dissents for the reasons given by Mr. Justice Rogers.

Rogers, C. J., concurs in overruling exception of no right of action, but otherwise dissents and hands down reasons.

Thompson, J., concurs in opinion overruling exception of no right of action; otherwise dissents and concurs in dissenting opinion of Justice Rogers.

[fol. 47] IN SUPREME COURT OF LOUISIANA

No. 29569

SILAS P. BORDEN ET ALS.

VS.

LOUISIANA STATE BOARD OF EDUCATION ET AL.

OPINION

ROGERS, J. (concurring in part and dissenting in part):

As stated in the majority opinion, I concur in the majority view that the plaintiffs as taxpayers have a right to judicially contest the expenditure of the funds of the state under the alleged unconstitutional legislative acts, but I dissent from the majority view that the acts themselves are not unconstitutional. My opinion is, that they are flagrantly unconstitutional in several particulars. The prohibitory clauses of the constitution violated by the statutes are couched in words so plain and unambiguous that he who runs may read them.

1st. Act 143 of 1928 so far as it purports to appropriate the sum of $750,000 for the purpose of free school books for the use of the school children of the state is plainly violative of Section 16 of Article 3 of the state constitution. The constitutional provision requires that every legislative act shall have but one object and shall have a title indicative of such object. There is nothing in the title to the statute under discussion which meets the constituitonal requirement. The statutory title so far as it is pertinent to the discussion reads: "An act making an appropriation to defray the ordinary expenses of government * * *; and to support *public schools* * * *." (Writer's italics.)

The argument advanced in the majority opinion overruling this contention of the plaintiffs is, that the title to the act is similar to titles usually used in General Appropriation Acts in this state, and is sufficient to cause one

to anticipate that, upon investigation some such appropriation may be found in the body of the act.

I admit that the title is similar to titles usually used in General Appropriation Acts but I assert that no prior General Appropriation Act to which such title is appended contains an appropriation for the purpose of purchasing [fol. 48] free school books for *all* the children of the state. Therefore, I respectfully suggest that the argument on the point in the majority opinion is inapplicable to the issue presented by plaintiffs' contention. Nor can I agree with the majority view, that the title, "suffices to cause one to anticipate that, upon investigation, some such appropriations may be found in the body of the act." For my own part, I think the title suggests the contrary view, namely, that it is such as to cause one to anticipate that, upon investigation, only appropriations for the support of the *public schools* will be found in the body of the act. That is what the title in plain words says, viz.: "An act making an appropriation * * * to support the *public schools.*" (Writer's italics.) Whatever else the title may indicate concerning the appropriations made by the statute for other purposes, so far as the appropriations for schools are concerned, it seems to me to be too clear for argument that the statutory title not only indicates but expressly declares that they are made for the support of the public schools, and for the public schools alone. This being the case, the appropriation by the statute for the purchase of free school books for the use of school children, meaning all school children in public, private or sectarian schools, of the state goes far beyond the object set forth in the statutory title.

2nd. Act 143 of 1928 so far as the appropriation under review is concerned is clearly violative of Section 9 of Article 4 of the state constitution. The section and article provides:

"The general appropriation bill shall embrace *nothing but* appropriations for the ordinary expenses of the government, pensions, the public debt and interest thereon, *public schools,* public roads, public charities and all State institutions." (Writer's italics.)

A mere reading of the quoted provision discloses that, whether the appropriation be for all schools, public, private and sectarian, or for the children of such schools, the item complained of by plaintiff is not for any of the purposes or objects enumerated therein. The item is therefore illegally incorporated into the general appropriation bill. [fol. 49] The argument that the appropriation falls within the ordinary expenses of the government is, I respectfully suggest, unsound. Such expenses are merely those that are usually and customarily incurred in the regular administration of the governmental affairs. The appropriation in question is the first in the history of the state, so far as I am informed, that has been made by the legislature to purchase school books for all the children of the state. It purports to dispose partially of a special fund (Severance Tax Fund) created and levied by special laws. The appropriation, in my opinion, is, therefore, an unusual, and not an usual, one, and is not such an appropriation as has been customarily made to take care of the ordinary running expenses of the state government. If the position of the majority of the court, as expressed in the majority opinion, be correct, then the exceptions set forth in the constitutional provision are superfluous and meaningless, with the single exception of appropriations for the ordinary expenses of government which would comprehend the other expenses enumerated. But the framers of the constitution ex industria discriminated between the ordinary expenses of government and the other expenses that might be included in the general appropriation bill. Among these other expenses are the expenses for public schools. If the expenses for such schools were not intended by the framers of the constitution to be included among the ordinary expenses of government, how can it be successfully contended that the expenses of all the schools of the state, necessarily including the public schools, may constitutionally be included among the ordinary governmental expenses? The question, I respectfully submit, answers itself. And the answer becomes more emphatic in the light of Section 1 of Article 12 of the constitution, providing that the educational system of the state shall consist only of free public schools and all institutions of learning supported in whole or in part by public funds.

3rd. Both statutes, Nos. 100 and 143 of 1928, clearly violate Section 8 of Article 4 and Section 13 of Article 12 of the state constitution.

Section 8 of Article 4 contains two provisions prohibit- [fol. 50] ing the withdrawal of funds from the state treasury for sectarian or private purposes, as follows, viz:

"No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or denomination of religion, * * *.

"No appropriation from the State Treasury shall be made for private, charitable or benevolent purposes to any person or community * * *."

Section 13 of Article 12 reads as follows, viz:

"No public funds shall be used for the support of any private or sectarian school."

It does not require any extended reasoning to produce the conviction that to withdraw money from the public treasury for the purpose of purchasing books to be used in sectarian schools is to use such money "indirectly" if not "directly" in aid of the church, sect or religious denomination conducting the schools. It is obvious, also, that an appropriation from the state treasury for purchasing books to give or lend directly to all the school children, or indirectly to all the schools, of the state, is an appropriation for private or benevolent purposes.

By Section 13 of Article 12, supra, the framers of the constitution have deliberately established the public policy of the state concerning the disposition of its funds for school purposes. The language of the provision is clear and explicit, requiring no interpretation. Its intention is to preserve the school fund for the use of the public schools, by prohibiting the diversion of the fund, or any part thereof, for the support of any private or sectarian school. The wisdom and policy of the constitutional provision is no concern of the courts. Their function is confined solely to its enforcement.

The four members of the court who think that the legislative acts under rexiew are constitutional attempt to avoid the effect of the quoted provisions of the constitution by

holding that they are inapplicable, because the appropriations are made for the purpose of purchasing books for the use of the school children, with a resultant benefit to the state, and not for the schools themselves. In my [fol. 51] opinion, this holding is a mere begging of the question. The maintenance of private or sectarian schools, however valuable may be the work which they perform, is not a public purpose so as to justify the expenditure of the public money in their support. School books are as essential to the means of imparting instruction to the children as are other educational appliances, school houses and school teachers. But I do not believe that any one will contend for a moment that, in the face of the prohibitory clauses of the constitution, money can be taken from the public treasury for the purpose of furnishing the children in private and sectarian schools with these necessary educational facilities. To say the least, the appropriation of the public funds for the purchase of books for all the school children of the state is an attempt to do indirectly that which cannot be done directly. The argument of resultant benefit to the state must and does fall before the rule of public policy established in the organic law itself that the welfare of the state can be best promoted by prohibiting appropriations from the public treasury in aid of any church, religious denomination, private charitable or benevolent purpose, private or sectarian school.

4th. Another and insuperable objection to the majority view that the statutes under attack are constitutional because they provide for supplying books to the children and not to the schools is to be found in Section 12 of Article 4 of the constitution. That section so far as pertinent to the issue reads as follows, viz:

"The funds, credit, property or things of value of the state or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person, or persons, association or corporation, public or private; * * *."

It is argued in the majority opinion that the constitutional provision is inapplicable to the case at bar, because the books are not granted or donated but only loaned to the

children, which may be legally done in a reasonable exercise of the police power of the state. The statutes themselves do not provide for the return or repossession of the books, nor for any indemnification of the state in the event [fol. 52] they are lost, destroyed or injured. But, be that as it may, the majority view necessarily admits that title to the books remains in the state—that they are property or things of value belonging to the state; and the constitutional provision which I have quoted in express words declares that as such they cannot be loaned to any person or persons. To say that the lending contemplated in the constitutional provision is not such a lending as will take place in case of the books supplied to the children of the state under the authority of the statute herein attacked, is, in my opinion, an inference wholly unwarranted by the language of the provision. Nor is there any room here for the application of the state's police power. That power is not absolute and cannot be invoked to sustain legislative acts which in their operation defeat the objects and purposes of the organic law. As I see it, the majority decision writes into the state constitution a provision that was not incorporated into the original instrument by the framers.

For the foregoing reasons, I think that the judgment appealed from should be annulled and that the case should be remanded with instructions to the district judge to issue the injunction prayed for by the plaintiffs.

[fol. 53] IN SUPREME COURT OF LOUISIANA

No. 29579

EMMETT COCHRAN et als.

vs.

LOUISIANA STATE BOARD OF EDUCATION et als.

MOTION FOR REHEARING—Filed June 19, 1929

Now into Court, through the undersigned counsel, come Emmett Cochran, W. M. Guice, Jr., Henry Steinau, and A.

H. Tarver, plaintiffs and appellants, and suggest to the Court that the opinion and decree rendered in this cause on the 17th day of June, 1929, is erroneous, contrary to the law and the evidence, prejudicial to the interest of appearers, and that a Rehearing should be granted in this matter for the following reasons, to-wit:

1

The Court erred in the majority opinion in holding that Act 143 of 1928, in so far as it purports to appropriate $750,000.00 for purchasing of free school books for the use of the school children of the State, does not violate Section 16 of Article III of the Louisiana Constitution.

2

The Court erred in the majority opinion in holding that the appropriation for the purchase of school books for the school children of the State of Louisiana, contained in Act 143 of 1928, are such appropriations as may be included in the general appropriation act, and in holding that said Act does not violate Section 9 of Article IV, and Section I of Article XII of the Constitution of Louisiana.

3

The Court erred in the majority opinion in holding that Acts 100 and 143 of 1928 are not in contravention of Section 8 of Article IV, Section 4 of Article I, Section 13 of Article XII, and Section 12 of Article IV of the Constitution of Louisiana, by holding that said Acts do not authorize the drawing of money from the public treasury for the purpose of teaching religion, by holding that said acts are not in aid [fol. 54] of churches, sects, and denominations of religion, and by holding that said Acts do not provide for the distribution and expenditure of public funds for private, charitable, or benevolent purposes to private persons and institutions, and in holding that said Acts do not authorize the loaning, pledging, or granting of State Funds to or for any persons or persons, associations, or corporations, public or private.

4

The Court erred in the majority opinion in holding that the State Board of Education is the proper agency for the

expenditure of the funds appropriated by Act 143 of 1928 for the purchase of free school books, rather than the respective parish school boards, and in holding that said act is not in violation of Section 14 of Article XII of the Constitution of Louisiana.

5

The Court erred in the majority opinion in holding that the Acts complained of do not authorize the taking of private property for other than public purposes, and are not in violation of a guaranteed republican form of government, and in holding, therefore, that said Acts are not violative of Sections 2 and 4 of Article I of the Louisiana Constitution, and of Section 4 of Article IV and of the 14th Amendment to the Constitution of the United States.

Wherefore appearers pray that, after due consideration, a rehearing be granted in this case, and that finally the judgment appealed from should be annulled, and that injunction issue as prayed for by appearers.

(Signed) Galloway & Johnson, Attorneys for Plaintiffs and Appellants.

We hereby certify that the above motion is filed in good faith and not for purposes of mere delay, but to secure substantial justice, and that a copy hereof has been mailed to the opposing counsel.

(Signed) Galloway & Johnson.

[fol. 55] [File endorsement omitted.]

In Supreme Court of Louisiana

No. 29579

Cochran

vs.

Louisiana State Board of Education

Order Denying Rehearing—July 8, 1929

It is ordered that the rehearing applied for in this case be refused.

[fol. 56] IN SUPREME COURT OF LOUISIANA

EMMETT COCHRAN et als., Appellants,

vs.

LOUISIANA STATE BOARD OF EDUCATION et als., Appellees

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Oct. 2, 1929

PETITION FOR APPEAL

Considering themselves aggrieved by the decision of the Supreme Court of the State of Louisiana rendered on June 17, 1929, in the cause entitled Emmett Cochran et als. vs. Louisiana State Board of Education et als., No. 29,579 on the Docket of said Court, which said judgment and decision became final on July 8, 1929, when the said Supreme Court of Louisiana denied a motion for rehearing timely filed by appellants, the plaintiffs therein, Emmett Cochran, W. M. Guice, Jr., Henry Steinau and A. H. Tarver, hereby pray for an appeal to the Supreme Court of the United States therein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said Appellants assign the following errors in the record and proceedings in said cause:

1. That the Supreme Court of the State of Louisiana erred in holding that the purchasing and supplying of free school books by the State of Louisiana out of public tax funds in the State Treasury for the use of all the school children of the State of Louisiana, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State of Louisiana, is "an ordinary obligation and expense of government."

2. That the Supreme Court of the State of Louisiana erred in holding that the purchasing, and subsequent granting or lending, of free school books by the State of Louisiana out of public tax moneys in the State Treasury, for the

[fol. 57] use of all the school children of the State of Louisiana, including children attending private, religious and sectarian and other schools not embraced in the public educational system of the State of Louisiana, is permissible as an exercise of the police power of the State.

3. That the Supreme Court of the State of Louisiana erred in holding that the purchasing, and subsequent granting or lending, of free school books by the State of Louisiana out of public tax moneys in the State Treasury for the use of all the school children of the State of Louisiana, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State of Louisiana, is for a "public purpose" so as to authorize the expenditure therefor of State funds.

4. That the Supreme Court of the State of Louisiana erred in holding that the purchasing, and subsequent granting or lending, of free school books by the State of Louisiana out of public tax moneys in the State Treasury for the use of all the school children of the State of Louisiana, including children attending private, religious, sectarian and other schools not embraced in the public educational system of the State of Louisiana, as authorized by Acts 100 and 143 of the Legislature of Louisiana for the year 1928, does not constitute a taking of the property of plaintiffs, as taxpayers and as patrons of public schools of the State of Louisiana, without due process of law, and in holding that said acts are constitutional and not in violation of the 14th Amendment to the Constitution of the United States, petitioners raising said question of their rights under said Amendment in pleadings, trial and arguments in the original trial court, as well as in application to the Supreme Court of Louisiana for writs of certiorari and mandamus, on appeal to the Louisiana Supreme Court and on motion for a rehearing therein.

5. That the Supreme Court of the State of Louisiana erred in holding that the purchasing, and subsequent granting or lending, of free school books by the State of Louisiana out of public tax moneys in the State Treasury, for the use of all the school children of the State of Louisiana, including children attending private, religious, sectarian and [fol. 58] other schools not embraced in the public educa-

tional system of the State of Louisiana, as authorized by Acts 100 and 143 of the Legislature of Louisiana for the year 1928, is not violative of Section 4 of Article IV of the Constitution of the United States which guarantees to every state in the Union a Republican Form of Government, petitioners raising said question of their rights under said Amendment in pleadings, trial and arguments in the original trial Court, as well as in application to the Supreme Court of the State of Louisiana for writs of certiorari and mandamus, on appeal to the Supreme Court of Louisiana and on motion for a rehearing therein.

PRAYER FOR REVERSAL

For which errors the petitioners pray that the said judgment of the Supreme Court of the State of Louisiana, dated June 17, 1929, and which became final on July 8, 1929, in the above entitled cause, be reversed, and judgment rendered in favor of said petitioners, and for costs.

R. S. Benoit, James U. Galloway, Nash Johnson,
Counsel for Plaintiffs-Appellants.

[fols. 59 & 59½] IN SUPREME COURT OF LOUISIANA

EMMETT COCHRAN et als., Appellants,

vs.

LOUISIANA STATE BOARD OF EDUCATION et als., Appellees

ORDER ALLOWING APPEAL—Filed Oct. 2, 1929

The appellants in the above entitled suit, and each of them, having prayed for allowance of appeal in this cause to the Supreme Court of the United States, from the judgment made and entered in the suit entitled Emmett Cochran et als., vs. Louisiana State Board Education et als., No. 29,579 on its docket by the Supreme Court of the State of Louisiana on June 17, 1929, and made final on July 8, 1929, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the Statutes and to the

rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Louisiana in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Louisiana shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of one thousand dollars ($1,000).

Dated October 2nd, 1929.

Charles A. O'Niell, Chief Justice of the Supreme Court of the State of Louisiana. (Seal Supreme Court of the State of Louisiana.)

[fols. 60 & 60½] Citation, in usual form, showing service on Percy Saint, filed October 2, 1929, omitted in printing.

[fols. 61 & 62] Bond on appeal for $1,000, approved and filed October 2, 1929, omitted in printing.

[fol. 63] In Supreme Court of Louisiana

Emmett Cochran et als., Appllants,

vs.

Louisiana State Board of Education et als., Appellees

Præcipe for Transcript of Record

The Clerk of the Supreme Court of Louisiana will please proceed to make up the transcript in the above numbered and entitled cause, including therein the following:

1. Plaintiffs' original petition.
2. Answer of Defendants.

3. Written opinion of Geo. K. Favrot, Judge Trial Court.

4. Application of plaintiffs to Supreme Court of Louisiana for Writs of certiorari and mandamus—Filed man. #29557.

5. Opinion of Supreme Court of Louisiana, dated October 2, 1928, denying application for writs.

6. Opinion of Supreme Court of Louisiana on appeal, dated June 17, 1929, together with opinion of same date in the consolidated case of Silas P. Borden et als., vs. Louisiana State Board of Education et als., No. 29569 on the Docket of the Supreme Court of Louisiana.

7. Plaintiffs' motion for re-hearing.

8. Minutes of Supreme Court of Louisiana, of date July 8, 1929, showing refusal of rehearing.

9. Petition for appeal, assignment of errors and prayer for reversal, filed by plaintiffs-appellants.

10. Order allowing appeal and fixing bond.

11. Citation of appeal with return thereon.

12. Bond of appeal with approval thereon.

13. This præcipe with return thereon.

14. Your certificate.

R. S. Benoit, James U. Galloway, Nash Johnson, Counsel for Appellants.

We hereby acknowledge service of the foregoing præcipe and attest that we have no request for additions to foregoing precipe.

Dated Oct. 2, 1929.

Percy Saint, Peyton N. Sandoz, Counsel for Appellees.

[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] Judge's certificate to clerk omitted in printing.

[fol. 66] Clerk's certificate to judge omitted in printing.

[fol. 67] IN SUPREME COURT OF UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Nov. 12, 1929

Appellants, Emmett Cochran, W. M. Guice, Jr., Henry Steinau, et al., state that they expect to rely upon each and all of the assignments of error attached to the record filed herein.

Designation of Part of Record to be Printed.

The entire record.

Wade H. Ellis, Daniel C. Roper, W. D. Jamieson, Herbert S. Ward, James U. Galloway, Nash Johnson, Counsel for Appellants.

Wade H. Ellis.

DISTRICT OF COLUMBIA, *ss:*

Challen B. Ellis, being first duly sworn, deposes and says that on November 11, 1929, he served true copies of fore-[fol. 68] going "Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed," upon Honorable Percy Saint, Attorney General, State of Louisiana, Baton Rouge, Louisiana; Messrs. White, Holloman & White, Alexandria, Rapides Parish, Louisiana; Messrs. Burke & Smith, New Iberia, Iberia Parish, Louisiana, attorney, for Appellees, by mailing said copies, respectively to each of them addressed as above; that the fact of mailing is shown by registered mail receipts hereto attached and by reference made a part of this affidavit.

Challen B. Ellis, of Counsel for Appellants.

Sworn to before me and subscribed in my presence this 12 day of November, 1929. Minerva G. Culton, Notary Public, D. C. My commission expires June 10, 1934. (Seal of Minerva G. Culton, Notary Public, District of Iberia, La.)

[fol. 69] [File endorsement omitted.]

Endorsed on cover: File No. 34,599. Louisiana Supreme Court. Term No. 468. Emmett Cochran, W. M. Guice, Jr., Henry Steinau et al., appellants, vs. Louisiana State Board of Education et al. Filed October 29, 1929. File No. 34599.

SUPREME COURT OF THE UNITED STATES

STIPULATION AND ADDITION TO RECORD—Filed Mar. 26, 1930

To the Honorable Chief Justice and Associate Justices of the United States Supreme Court:

It appearing that the official transcript of the record in this case is deficient in that it lacks certain evidence presented in the lower Court, and since it was understood by written agreement that the præcipe presented should require that the whole record go up, we respectfully present to the Court the fact that the attached affidavits submitted in this case were omitted from the record, and we, therefore, submit them for the consideration of this Honorable Court.

Percy Saint, Attorney General of Louisiana; Peyton R. Sandoy, Assistant Attorney General; White, Holloman & White, Burke & Smith, of Counsel, All Appearing for Defendants. Wade H. Ellis, Counsel for Appellants. Daniel C. Roper, W. D. Jamieson, Herbert S. Ward, James U. Galloway, Nash Johnson, of Counsel.

New Orleans, La., March 15, 1930.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared T. H. Harris, resident of this Parish and State, who, after being duly sworn deposed and said:

That he is State Superintendent of Public Education and Secretary of the State Board of Education, of the State of Louisiana;

That the books listed in bulletin No., 126, dated July 15th., 1928, a copy of which is attached hereto and made a part hereof, are the text books which have been adopted by the State Board of Education and all of which are covered by contracts with the publishers for use in the public schools of the State, except those located in the City of New Orleans;

That the books listed on schedule "A", which is attached hereto and made a part hereof, have been adopted by the State Board of Education and are covered by contracts for use in the high schools of the City of New Orleans; and the books listed on schedule "B", which is attached hereto and made a part hereof, have been adopted by the State Board of Education and are covered by contracts for use in the elementary schools in the City of New Orleans; and;

That no text books other than those listed in bulletin No., 126 and schedules "A" and "B" are used as basal texts in the public schools in the State.

(Sgd.) T. H. Harris.

Sworn to and subscribed before me, at Baton Rouge, Louisiana, this 22nd, day of August, 1928. (Sgd.) John B. Smullin, Notary Public.

P.—, D-1. Filed in Evidence 8/24, 1928. (Sgd.) B. F. Burnett, Dy. Clerk.

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Clerk's Office

I hereby certify the foregoing one (1) page to be a true and correct copy of offering marked "D-1", together with documents attached, filed in suit No. 3578 on the docket of the 19th Judicial District Court.

Given under my hand and seal of office, at Baton Rouge, La. this March 14th, 1930.

Celia Stone, Dy. Clerk of Court. Seal of the Clerk of the Parish of East Baton Rouge, La.

State Department of Education of Louisiana, June 15, 1928

Bulletin No. 126

Elementary Textbooks and High School Textbooks for Use in the Public Schools of Louisiana (Orleans Not Included)
T. H. Harris, State Superintendent of Public Education

Public School Officials and Teachers:

This pamphlet contains the titles, with prices, retail and wholesale, of elementary textbooks and high-school text-

books for use in the public schools of Louisiana, Orleans excepted.

The retail prices are the prices charged pupils by the local schoolbook depositories. The prices published in the pamphlet were copied from the contracts bearing the signatures of the publishers. They are, therefore, official, and in no case should higher prices be paid. The State depository is F. F. Hansell & Brother, New Orleans.

The wholesale prices are the prices charged school boards ordering books in wholesale quantities, and these prices involve the understanding that payment is to be made within thirty days after receipt of books. School boards, having on hand unused high-school textbooks at the close of the contract period (September 1st, 1931), have the right to return them to the publishers at the prices paid for them.

The allowance for displaced high-school textbooks is so small as to be negligible, and I am therefore, not publishing the exchange prices.

For basal use, the textbooks here listed must be used to the exclusion of all other texts.

Very truly, T. H. Harris, State Superintendent of Public Education.

High School Textbooks

English

	Retail price	Wholesale price F. O. B. publisher
Comprehensive Standard Dictionary, Funk & Wagnalls Co., New York, N. Y.	$1.00	$ .86
Law's English for Immediate Use, Chas. Scribner's Sons, Atlanta, Ga.	1.35	1.08
Ward's Sentence and Theme, Revised, Scott, Foresman & Co., Atlanta, Ga.	1.14	.99
Miller and Palmer's High-School English, Lyons & Carnahan, Chicago, Ill.	1.23	.984
Literature and Life, Book 1, Scott, Foresman & Co., Atlanta, Ga.	1.55	1.35
Literature and Life, Book 2, Scott, Foresman & Co., Atlanta, Ga.	1.66	1.44

	Retail price	Wholesale price F. O. B. publisher
Literature and Life, Book 3, Scott, Foresman & Co., Atlanta, Ga.	1.73	1.50
Literature and Life, Book 4, Scott, Foresman & Co., Atlanta, Ga.	2.07	1.80
To be purchased by school boards for use of teachers:		
Painter's Introduction to English Literature, Benjamin H. Sanborn & Co., Chicago, Ill.	1.36	1.22
Painter's Introduction to American Literature, Benjamin H. Sanborn & Co., Chicago, Ill	1.36	1.22
Mathematics		
Van Tuyl's Essentials of Business Arithmetic, American Book Company, Cincinnati, Ohio	1.14	.90
Wells and Hart's Modern High-School Algebra, D. C. Heath & Co., Atlanta, Ga.	1.40	1.20
Wentworth-Smith's Plane Geometry, Ginn & Co., Atlanta, Ga.	.94	.75
History		
Elson's Modern Times and the Living Past, American Book Company, Cincinnati, Ohio	2.28	1.80
Stephenson's American History, Ginn & Co., Atlanta, Ga.	1.80	1.44
Civics		
Long's Government and the People, Chas. Scribner's Sons, Atlanta, Ga.	1.50	1.20
Science		
Van Buskirk and Smith's The Science of Everyday Life, Houghton Mifflin Company, Boston, Mass.	1.50	1.20

	Retail price	Wholesale price F. O. B. publisher
George W. Hunter's A Civic Biology, American Book Company, Cincinnati, Ohio	1.60	1.26
Hessler and Smith's Essentials of Chemistry, Benjamin H. Sanborn & Co., Chicago, Ill.	1.25	1.13
Carthart and Chute's Practical Physics, Allyn & Bacon, Atlanta, Ga.	1.51	1.12
Chute's Laboratory Guide to Physics, Allyn & Bacon, Atlanta, Ga.	.56	.45

Latin

D'Ooge's Elements of Latin, Ginn & Co., Atlanta, Ga.	1.24	.99
D'Ooge and Eastman's Caesar in Gaul, Ginn & Co., Atlanta, Ga.	1.62	1.29

French

Listed:		
Fraser and Squair's New Complete French Grammar, D. C. Heath & Co., Atlanta, Ga.	1.52	1.32
or		
Camerlynck's First Year: France: Premiere Annee de Francais, Allyn & Bacon, Atlanta, Ga.	1.18	.93
Camerlynck's France: Deuxieme Annee de Francais, Allyn & Bacon, Atlanta, Ga.	1.18	.93
(The parish boards to make the selection of the course desired to be used).		

Spanish

No books recommended. Teachers to make their own selections.

Commercial Subjects

	Retail price	Wholesale price F. O. B. publisher
Redway's Commercial and Industrial Geography, Chas. Scribner's Sons, Atlanta, Ga.	1.62	1.29
Twentieth Century Bookkeeping and Accounting, Southwestern Publishing Company (Two Year Course), Cincinnati, O.	1.48	1.11
Whigham's Essentials of Commercial Law, Gregg Publishing Company, Chicago, Ill.	.84	.70

Stenography

Teachers to make selections.

Books for Use in Smith-Hughes Agricultural Departments

Goff's' Principles of Plant Culture, The Macmillan Company, Dallas, Texas	1.87	1.68
Lyon's Soils and Fertilizers, The Macmillan Company, Dallas, Texas	1.33	1.20
Plumb's A Study of Farm Animals, Webb Publishing Company, St. Paul, Minn.	1.90	1.60
Davis' Productive Plant Husbandry, J. B. Lippincott Company, Chicago, Ill.	2.00	1.50
Boss' Farm Management, Lyons & Carnahan, Chicago, Ill.	1.31	1.05
Carver's Elements of Rural Economics, Ginn & Co., Atlanta, Georgia	1.39	1.11

Books for Home Economics Departments

McGowan and Waite's Textiles and Clothing, The Macmillan Company, Dallas, Texas	1.10	.99
Willard and Gillett's Dietetics for High Schools, The Macmillan Company, Dallas, Texas	1.16	1.05

	Retail price	Wholesale price F. O. B. publisher
Harris and Lacey's Every Day Foods, Houghton Mifflin Company, Dallas, Texas	1.47	1.17
Matthews' The House and Its Care, Little, Brown & Company, Boston, Massachusetts	1.50	1.12½

Elementary Textbooks Adopted by the State Board of Education for Use During the Session of 1928-1929, with the Privilege of Extending the Contracts for an Additional Five-year Period

Basal List

Textbooks and Publisher

Grade

Reading

New Elson Readers, Scott, Foresman and Company, Chicago, Ill.:

		Retail price	Wholesale price del. to Parish Sch. Bd.
1	Primer	.48	.432
1	Book One	.52	468
2	Book Two	.59	.531
3	Book Three	.66	.594
	The Open Road to Reading, Ginn & Company, Atlanta, Ga.:		
4	Fourth Reader	.56	.504
5	Fifth Reader	.59	.531
6	Sixth Reader	.66	.594
7	Reading and Living, Book I, Charles Scribner's Sons, New York, N. Y.	.83	.747

Arithmetic

Wentworth-Smith School Arithmetic, Ginn & Company, Atlanta, Ga.:

3-4	Book One	.56	.504
5-6	Book Two	.59	.531
7	Book Three	.60	.540

Spelling

		Retail price	Wholesale price del. to Parish Sch. Bd.
1-7	Horn-Ashbaugh Spelling Book, J. B. Lippincott Co., Philadelphia, Pa.	.37	.32

Geography

	McMurry-Parkins Geography, The Macmillan Company, Dallas, Texas:		
4-5	Elementary	1.06	.955
6-7	Advanced	1.39	1.25

History

5	Beginner's History of Our Country, Southern Publishing Company, Dallas, Texas	.60	.54
6	Our Community, The John C. Winston & Company, Philadelphia, Pa.	.65	.58
6	The Story of Louisiana, Bobbs Merrill Company, Indianapolis, Ind.	.95	.76
7	Essential Facts of American History, Benj. H. Sanborn and Co., Chicago, Ill.	1.15	.98

Physiology and Hyg-ene

4	The Primer of Hygiene, World Book Company, Yonkers-on-Hudson, N. Y.	.48	.432
7	The Primer of Sanitation and Physiology, World Book Company, Yonkers-on-Hudson, N. Y.	.84	.756

Writing

1-7	Graves's Muscular Writing, W. S. Benson and Company, Austin, Texas	.08	.071

Language

	Open Door Language, Houghton Mifflin Company, Boston, Mass.:		
3-4	Book One	.53	.48
5-7	Book Two	.75	.63

Drawing

		Retail price	Wholesale price del. to Parish Sch. Bd.
	Practical Drawing, Modern Arts Course, Revised, Practical Drawing Company, Dallas, Texas:		
1-4	Drawing 1-4	.14	.126
5-7	Drawing 5-7	.19	.171

Supplementary List

Silent Reading

	Stone's Silent Reading, Houghton Mifflin Company, Boston, Mass.:		
1	Book One	.56	.51
2	Book Two	.67	.61
3	Book Three	.75	.68
	The Study Readers, Chas. E. Merrill Co., New York, N. Y.:		
4	Fourth Reader	.69	.621
5	Fifth Reader	.71	.639
6	Sixth Reader	.71	.639
	The Silent Reader. The John C. Winston Company, Philadelphia, Pa.:		
7	Seventh Reader	.80	.68

Health, Civics, Safety, and Fire Prevention Readings

1	Safety Hill of Health, World Book Company, Yonkers, New York	.61	.549
2	Building My House of Health, World Book Company, Yonkers-on-Hudson, N. Y.	.65	.585
3	Health Habits, American Book Company, Cincinnati, Ohio	.69	.63
4	Uncle Jim the Fire Chief, Southern Publishing Company, Dallas, Texas	.50	.45
5	Health Habits by Practice, Book One, Lyons and Carnahan, Chicago, Ill.	.82	.72

		Retail price	Wholesale price del. to Parish Sch. Bd.
6	Jimmie and the Junior Safety Council, World Book Company, Yonkers-on-Hudson, New York	.72	.648
7	My Country, Ginn and Company, Atlanta, Georgia	.94	.846
	Informational Reading		
	Child-Story Reader, Lyons and Carnahan, Chicago, Illinois:		
1	First Reader	.49	.43
2	Second Reader	.63	.56
3	Geography for Beginners, Book One, Rand McNally and Company, Chicago, Ill.	.78	.702
	History Stories of Other Lands, Row, Peterson and Company, Chicago, Ill.:		
4	Tales of Long Ago	.63	.57
	Science Readers, D. C. Heath and Company, Atlanta, Ga.:		
5	Book IV	.76	.684
6	Book V	.76	.684
7	Book VI	.76	.684
	Optional List		
	Music		
1-7	The Rural Song Book, Laidlaw Brothers, Chicago, Ill.	.28	.24
1-7	The Community Chorus Book, The John C. Winston Company, Philadelphia, Pa.	.10	.08
	Graded Music		
2-7	Progressive Music Series, Silver, Burdett and Company, Chicago, Ill.:		
2-3	Book One	.61	.549
4-5	Book Two	.65	.585
6-7	Book Three	.68	.612

Dictionary

		Retail price	Wholesale price del. to Parish Sch. Bd.
	Winston Simplified Dictionary, The John C. Winston Company, Philadelphia, Pa.:		
4-5	Primary	.70	.63
6-7	Intermediate	1.20	.95

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Clerk's Office

I hereby certify the foregoing seven (7) pages to be a true and correct copy of Bulletin No. 126 attached to offering "D-1," filed in suit No. 3578 on the docket of the 19th Judicial District Court.

Given under my hand and seal of office, at Baton Rouge, La., this March 14th, 1930.

—— ——, Dy. Clerk of Court. (Seal of the Clerk of the Parish of East Baton Rouge, La.)

List "A"

School Books Adopted by the State Board of Education for Use in the High Schools of the City of New Orleans

Prices are f. o. b. Publisher's Place of Business

Bookkeeping

Twentieth Century Bookkeeping and Accounting Text, Complete No. 1, Southwestern Publishing Co., Cincinnati	$1.11
Twentieth Century Banking Text No. 44, Southwestern Publishing Co., Cincinnati, Ohio	.45
Bookkeeping and Accounting Vol. 2, Series A, by James O. McKinsey, Southwestern Publishing Co., Cincinnati	1.50

Salesmanship

Whitehead's The Business of Selling, American Book Co., Cincinnati, Ohio 1.05

Commercial Law

Peter's Commercial Law, No. 84, Southwestern Publishing Co., Cincinnati, Ohio ..... .75

Civics

Woodburn and Moran's The Citizen and the Republic, Longmans Green Co., New York 1.31

Economics

Thompson's Elementary Economics, B. H. Sanborn & Co., Chicago, Ill. 1.32

English

Ward's Sentence Book, Scott, Foresman & Co., Chicago, Ill. ..... .19
Ward's Sentence and Theme, Scott, Foresman & Co., Chicago, Ill. ..... .99
Claxton and Maginnis' Effective English, Allyn and Bacon, Atlanta, Ga. 1.12
Literature and Life, Book I, Scott, Foresman Co., Chicago 1.35
Pace's American Literature with Readings, Ally & Bacon, Atlanta, Ga. 1.35
Halleck's New English Literature, American Book Co., Cincinnati, Ohio 1.29
Craig's The Speech Arts, Macmillan & Co., Dallas, Texas 1.20
Davis and Lingham's Business English and Correspondence, Ginn & Co. 1.11

History

West's Story of Man's Early Progress, Allyn & Bacon, Atlanta, Ga. 1.50

West's Story of Modern Progress, Allyn & Bacon, Atlanta 1.50
Elson's Modern Times and the Living Past, American Book Co., Cincinnati, Ohio 1.80
Stephenson's American History, Ginn & Co., Atlanta, Ga. 1.44
Cheyney's Short History of England, Ginn & Co., Atlanta, Ga. 1.47
Smith's Industrial History, Macmillan Co., New York 1.05

Latin

Scott's First Latin Lessons, Scott, Foresman & Co., Chicago, Ill. ..... .90
Sanford and Scott's Junior Latin Reader, Scott, Foresman & Co., Chicago, Ill. 1.05
Sanford, Scott and Beeson's Third Latin Book, Scott, Foresman and Co., Chicago, Ill. 1.20
Jones' Prose Composition, Scott, Foresman & Co., Chicago ..... .90
Allen and Greenough's Grammar, Ginn & Co., Atlanta, Ga. 1.20
Knapp's Aeneid, Books I-IX, and XII, Scott, Foresman & Co., Chicago, Ill. 1.35

Mathematics

Hawkes, Luby, Touton's Complete School Algebra, Ginn & Co., Atlanta, Ga. 1.20
Wentworth-Smith's Plane Geometry, Ginn & Co., Atlanta, Ga. ..... .93
Wentworth-Smith's Solid Geometry, Ginn & Co., Atlanta ..... .93
Wentworth-Smith's Plane Trigonometry and Tables, Ginn & Co. 1.20
Schoorling and Reeve's General Mathematics, Ginn & Co., Atlanta, Ga. 1.20
Sutton & Lennes' Business Arithmetic, Allyn & Bacon 1.05

Music

Hollis Dann's Sixth Year Music, American Book Co., Cincinnati ..... .54

Salesmanship

Whitehead's The Business of Selling, American Book Co., Cincinnati, Ohio 1.05

Commercial Law

Peter's Commercial Law, No. 84, Southwestern Publishing Co., Cincinnati, Ohio ..... .75

Civics

Woodburn and Moran's The Citizen and the Republic, Longmans Green Co., New York 1.31

Economics

Thompson's Elementary Economics, B. H. Sanborn & Co., Chicago, Ill. 1.32

English

Ward's Sentence Book, Scott, Foresman & Co., Chicago, Ill. ..... .19

Ward's Sentence and Theme, Scott, Foresman & Co., Chicago, Ill. ..... .99

Claxton and Maginnis' Effective English, Allyn and Bacon, Atlanta, Ga. 1.12

Literature and Life, Book I, Scott, Foresman Co., Chicago 1.35

Pace's American Literature with Readings, Ally & Bacon, Atlanta, Ga. 1.35

Halleck's New English Literature, American Book Co., Cincinnati, Ohio 1.29

Craig's The Speech Arts, Macmillan & Co., Dallas, Texas 1.20

Davis and Lingham's Business English and Correspondence, Ginn & Co. 1.11

History

West's Story of Man's Early Progress, Allyn & Bacon, Atlanta, Ga. 1.50

West's Story of Modern Progress, Allyn & Bacon, Atlanta 1.50
Elson's Modern Times and the Living Past, American Book Co., Cincinnati, Ohio 1.80
Stephenson's American History, Ginn & Co., Atlanta, Ga. 1.44
Cheyney's Short History of England, Ginn & Co., Atlanta, Ga. 1.47
Smith's Industrial History, Macmillan Co., New York 1.05

Latin

Scott's First Latin Lessons, Scott, Foresman & Co., Chicago, Ill. ..... .90
Sanford and Scott's Junior Latin Reader, Scott, Foresman & Co., Chicago, Ill. 1.05
Sanford, Scott and Beeson's Third Latin Book, Scott, Foresman and Co., Chicago, Ill. 1.20
Jones' Prose Composition, Scott, Foresman & Co., Chicago ..... .90
Allen and Greenough's Grammar, Ginn & Co., Atlanta, Ga. 1.20
Knapp's Aeneid, Books I-IX, and XII, Scott, Foresman & Co., Chicago, Ill. 1.35

Mathematics

Hawkes, Luby, Touton's Complete School Algebra, Ginn & Co., Atlanta, Ga. 1.20
Wentworth-Smith's Plane Geometry, Ginn & Co., Atlanta, Ga. ..... .93
Wentworth-Smith's Solid Geometry, Ginn & Co., Atlanta ..... .93
Wentworth-Smith's Plane Trigonometry and Tables, Ginn & Co. 1.20
Schoorling and Reeve's General Mathematics, Ginn & Co., Atlanta, Ga. 1.20
Sutton & Lennes' Business Arithmetic, Allyn & Bacon 1.05

Music

Hollis Dann's Sixth Year Music, American Book Co., Cincinnati ..... .54

Shorthand

The Phonographic Amanuensis, Phonographic Institute, Cincinnati, Ohio 1.25
Rational Typewriting—New High School Edition, Gregg Publishing Co., Chicago, Ill. 1.12
Gregg Manual, Gregg Publishing Co., Chicago, Ill. 1.12
Gregg Speed Studies, Gregg Publishing Co., Chicago, Ill. ..... .90
Gardiner's Constructive Dictation, Gregg Publishing Co., Chicago, Ill. ..... .90

Science

Tower, Smith, Turton and Cope's Physics, P. Blakiston Son & Co., Philadelphia, Penn. 1.08
McPherson and Henderson's Chemistry and Its Uses, Ginn & Co., Atlanta, Ga. 1.20
Salisbury's Physiography, Briefer Course, H. Holt & Co., New York City 1.50
Snyder's General Science, Allyn & Bacon, Atlanta, Ga. 1.20
Smallwood, Reveley and Bailery's New Biology, Allyn & Bacon, Atlanta, Ga. 1.20
Matthew's The House and Its Care, Little, Brown & Co., Boston, Mass. .....
Harris and Lacey's Everyday Foods, Houghton, Mifflin Co., Boston, Mass. .....

French

Roux's A First French Course, Macmillan & Co., Dallas, Texas ..... .99
Fontaine's French Composition, American Book Co., Cincinnati ..... .39
Aldrich, Foster and Roule's Elementary French, Ginn & Co., Atlanta, Ga. 1.17

Spanish

DeVitis' Brief Spanish Grammar, Allyn & Bacon, Atlanta, Ga. 1.05
Wilkins' Beginners' Spanish Reader, H. Holt and Co., New York, N. Y. 1.02

Umphrey's Prose Composition, American Book Co., Cincinnati ..... .60
Seymour and Carnahan's Short Spanish Review Grammar, Heath & Co., Atlanta, Ga. ..... .96
Broomhall's Spanish Composition, Allyn & Bacon, Atlanta, Ga. ..... .90
Warshaw and Bonilla's Elements of Spanish, Scott, Foresman & Co., Chicago, Ill. 1.20
Luria's Correspondencia Commercial, Silver, Burdett & Co., Chicago, Ill. 1.08
Becker's Essentials of Spanish Grammar, Ernest Becker, New Orleans, La. ..... .68
Un Veage a Sud-America by McHale, D. C. Heath & Co., Atlanta ..... .99

Physical Training

Lynch's First Aid, P. Blakiston & Co., Philadelphia, Pa.,
In Cloth Binding ..... .80
In Paper Binding ..... .48

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Clerk's Office

I hereby certify the foregoing three (3) pages to be a true and correct copy of List "A" attached to offering "D-1" filed in suit No. 3578 on docket of the 19th Judicial District Court.

Given under my hand and seal of office, at Baton Rouge, La., this March 14th, 1930.

Celia Stone, Dy. Clerk of Court. (Seal of the Clerk of the Parish of East Baton Rouge, La.)

List "B"

School Books Adopted by the State Board of Education for Use in the Elementary Schools of the City of New Orleans

(Prices are f. o. b. Publisher's Place of Business)

Full name of text	Publisher	Address	Price
Stone's Arithmetic, 3rd Grade	Benj. H. Sanborn Co.	625 S. Wabash Ave., Chicago	$ .42
" " 4th "	" " " "	" " " " "	.42
" " 5th "	" " " "	" " " " "	.45
" " 6th "	" " " "	" " " " "	.45
" " 7th "	" " " "	" " " " "	.48
" " 8th "	" " " "	" " " " "	.48
Thompson's History of the United States	D. C. Heath & Co.	63 N. Pryor St., Atlanta	1.00
American Beginnings in Europe—Gordy	Chas. Scribner's Sons	186 Spring St., Atlanta	.84
The Beginner's History of Our Country—Estill	Southern Publishing Co.	Dallas, Texas	.48
P. J. G. O. & W. English Primary Part I	Ginn & Co.	95 Luckie St., Atlanta	.32
" " " " " " " Part II	" " "	" " " "	.32
" " " " " " Intermediate Part 1	" " "	" " " "	.32
" " " " " " " Part 2	" " "	" " " "	.32
" " " " " " Complete Part 1	" " "	" " " "	.40
" " " " " " " 2	" " "	" " " "	.40
Brigham & McFarlane Essentials of Geography 1st Bk., Pt. 1	American Book Co.	300 Pike St., Cincinnati	.51
" " " " " " " " Pt. 2	" " " "	" " " "	.72
" " " " " " 2nd Bk., Pt. 1	" " " "	" " " "	.84
" " " " " " " " Pt. 2	" " " "	" " " "	.75
Commercial Geography—Brigham	Ginn & Co.	95 Luckie St., Atlanta	1.29
Primer of Physiology—Ritchie	World Book Co.	Yonkers-on-the-Hudson, N. Y.	.70*
" " Sanitation "	" " "	" " " " " "	.70*
" " Hygiene "	" " "	" " " " " "	.64
Health Habits—O'Shea & Kellogg	Macmillan Co.	330 So. Harwood St., Dallas	.60

Natural Method Primer	Chas. Scribner's Sons	186 Spring St., Atlanta	.45
" " First Reader	" " "	" " " "	.48
" " Second Reader	" " "	" " " "	.54
" " Third Reader	" " "	" " " "	.57
The Elson Reader Book 4	Scott Foresman & Co.	63 N. Pryor St., Atlanta	.60
" " " " 5	" " "	" " " " "	.63
" " " " 6	" " "	" " " " "	.63
" " " " 7	" " "	" " " " "	.72
" " " " 8	" " "	" " " " "	.72
New Orleans Spelling List	F. F. Hansell & Bro., Ltd.	414 Carondelet St., New Orleans	.04
Essentials of Woodworking—Griffith	Manual Arts Press	Peoria, Ill.	.93
Listers' Writing Books—Elementary	The Macmillan Co.	330 S. Harwood St., Dallis	.15
Hollis-Dann Music Book 1	American Book Co.	300 Pike St., Cincinnati	.57
" " " " 2	" " "	" " " "	.39
" " " " 3	" " "	" " " "	.39
" " " " 4	" " "	" " " "	.45
" " " " 5	" " "	" " " "	.45
Folk & Art Songs Book 1	C. C. Birchard & Co.	Boston, Mass.	.52
" " " " 2	" " " "	" "	.62[4]
Twice 55 Community Songs No. 1	" " " "	" "	.13[3]
Junior Laurel Song No. 1	" " " "	" "	.80
Winston's Simplified Dictionary—Primary Ed.	J. C. Winston & Co.	Philadelphia, Pa.	.60
Elementary Community Civics—Hughes	Allyn-Bacon	249 Peachtree St., Atlanta	.90
Theory & Practice Cookery	The Macmillan Co.	330 So. Harwood St., Dallas	1.05
Household Arts—Cooley-Spohr	" " "		.99
Chancellors Arithmetic for Evening Schools	American Book Co.	300 Pike St., Cincinnati	.45
Chancellors Standard Short Course for Evening Schools	" " "	" " " "	.60
C. & L. Exercises in Business Practice	Ginn & Co.	95 Luckie St., Atlanta	.42
Little Book of Our Country—Tappan	Houghton-Mifflin Co.	4 Park St., Boston	.28[3]
Gordy Stories of Later American History	Charles Scribner's Sons	186 Spring St., Atlanta	.84
Meek & Wilson English Today Book II	" " "	" " " "	.57
Parsons Land of Fair Play	" " "	" " " "	.84

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Clerk's Office

I hereby certify the foregoing three pages to be a true and correct copy of "List "B" attached to offering "D-1", filed in suit No. 3578 on docket of the 19th Judicial District Court.

Given under my hand and seal of office, at Baton Rouge, La., this March 14th, 1930.

Celia Stone, Dy. Clerk of Court. (Seal of the Clerk of the Parish of East Baton Rouge, La.)

[File endorsement omitted.]